IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 61790/2012

In application by:

THE LAW SOCIETY OF THE NORTHERN PROVINCES	Applicant

and

JENNIFER GRAHAM	First Applicant in the main application
MATTHEW GRAHAM	Second Applicant in the main application

And

THE LAW SOCIETY OF THE NORTHERN PROVINCES	First Respondent in the main application
RONALD BOBROFF & PARTNERS INC.	Second Respondent in the main application
RONALD BOBROFF	Third Respondent in the main application
DARREN BOBROFF	Fourth Respondent in the main application

FILING SHEET:
SECOND, THIRD AND FOURTH RESPONDENTS' ANSWERING AFFIDAVIT IN RESPONSE TO APPLICANTS' COUNTER-APPLICATION

Presented for filing on this the 15th day of January 2015

R. ZIMERMAN

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TO:

THE REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION - PRETORIA

AND TO:

THE DEPUTY JUDGE PRESIDENT
7th Floor
HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION – PRETORIA

Received a copy hereof on the
day of 2016

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For: Defendant's Attorneys

AND TO:

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Received a copy hereof on the
day of 2016

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For: Defendant's Attorneys

AND TO:

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Received a copy hereof on the
day of 2016

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For: Defendant's Attorneys

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No.: **61790/12**

In the matter between:

LAW SOCIETY OF THE NORTHERN PROVINCES	Applicant

and

JENNIFER GRAHAM	First Applicant in the main application
MATTHEW GRAHAM	Second Applicant in the main application
ROAD ACCIDENT FUND	Intervening Third Applicant in the main application
RONALD BOBROFF & PARTNERS INC	Second Respondent in the main application
RONALD BOBROFF	Third Respondent in the main application
DARREN BOBROFF	Fourth Respondent in the main application

SECOND, THIRD AND FOURTH RESPONDENTS' ANSWERING AFFIDAVIT IN RESPONSE TO THE APPLICANTS'COUNTER-APPLICATION

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I, the undersigned,

RONALD BOBROFF

do hereby make oath and state the following:

1. I am an adult male practising attorney and managing director of the second respondent in the main application with its principal place of business situated at 37 Ashford Road, Rosebank, Johannesburg.

2. I am the third respondent in the main application and accordingly depose to this affidavit in my personal capacity. In addition, I am duly authorised to depose to this affidavit for and on behalf of the second and fourth respondents in the main application. In support, I attach a confirmatory affidavit from the fourth respondent marked "**RB1a**" and I also attach a supporting affidavit from Stephen Bezuidenhout ("**Bezuidenhout**") marked "**RB1b**".

3. The facts contained in this affidavit are within my personal knowledge, except where so stated or obvious from the context, and are to the best of my belief both true and correct.

4. For ease of reference, I refer to the parties as follows:

4.1. The first and the second applicants in the main application as "**the Grahams**";

4.2. The attorney of record representing the Grahams as "**Van Niekerk**";

4.3. The applicant as "**the Law Society**";

4.4. The intervening third applicant in the main application as "**the RAF**";

4.5. The second respondent in the main application as "**RBP**";

4.6. The third respondent in the main application as "Ronald",

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4.7. The fourth respondent in the main application as "**Darren**"; and

4.8. Darren, RBP and I are collectively referred to as "**the respondents**", "**we**" or "**our**" unless the context indicates otherwise.

5. Where legal submissions are made in this affidavit, the respondents do so on the advice of its legal advisers. The respondents believe such advice to be correct.

THE PURPOSE OF THIS AFFIDAVIT

6. I have read the Law Society's application dated 26 March 2015 and served upon the correspondent attorneys of our former attorneys of record on 9 April 2015 ("**the Law Society's application**").

7. I have also read the notice of motion and affidavit deposed to by Van Niekerk that was served upon the correspondent attorneys of our former attorneys of record on 24 April 2015 that answers the Law Society's application and founds a counter-application ("**the counter-application**"). I further read the Law Society's answering affidavit in opposition to the counter-application (which incorporates its answers in reply to Van Niekerk's affidavit). Accordingly, I curtail the respondents' answers hereunder to matters that the respondents' wish to bring to the attention of the Court. In summary, I submit that:

7.1 First, the counter-application is motivated by the self-interest of Discovery which we verily believe uses the Grahams as a conduit to benefit and advance their interests and vendetta against Darren and me.

7.2 Secondly, the impact of the counter-application would be to undermine the role, function and authority of the Law Society and, I submit, in the absence of circumstances to do so.

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7.3 Thirdly, it would be tantamount to this Court stepping into the shoes of the Law Society and in so doing acting as a court of first instance, whilst its role ordinarily is that of a review court.

7.4 Fourthly, and in any event, this Court would be meting out a sentence in_respect of conduct which was the norm amongst members of the Law Society, and in accordance with the permission and encouragement of their statutory regulatory authority in respect of the use of common law percentage contingency fee agreements; this in itself would be unfair and, I submit, irregular.

8 The respondents do not oppose the relief sought in the Law Society's application. This is the application that was issued in the latter part of March 2015 and in which the Law Society seeks appropriate relief to manage its own affairs *apropos* the investigation against the three respondents in the main application.

9 On the contrary, RBP has in fact fully cooperated in the Law Society investigation and, in our respectful submission, the Law Society is now in a position to formally charge RBP or any of its directors, if it elects, and any disciplinary enquiry is ripe for hearing.

9.1 On 7 September 2015, the respondents' former attorneys sent a letter to the Law Society's attorneys of record which stated *inter alia*:

"2. *Our clients respect the judgment of Murphy J. Accordingly our clients want to co-operate and be transparent. Our clients have no difficulty whatsoever with their billing system and practices being subjected to objective and impartial analysis.*

3. *Accordingly, our clients tender for inspection all their accounting records at a time convenient to the agents of the Law Society.*"

9.2 A copy of the letter is attached marked "**RB2**".

10 RBP respectfully submits that it has fully cooperated in the investigation of the Law Society.

JUST AND EQUITABLE RESOLUTION OF THIS APPLICATION

11 The alleged purpose of the suspension order sought for in the counter-application is in order to facilitate a proper investigation which may or may not result in a disciplinary hearing, which in turn may or may not result ina striking off application.

12 It is apparent from the replying affidavit of the Law Society deposed to by the new Vice-President, Mr Gule, and dated 23 November 2015, RBP and its directors have fully co-operated in the investigation of the Law Society. I refer this Honourable Court to paragraphs 3.7 – 3.13 of the affidavit of Mr Gule. In particular in paragraph 3.13(b), the consequences of the current proceedings is dealt with by the Law Society on the basis that *"if the Bobroffs have indeed given their full cooperation and a comprehensive inspection was done as ordered by Mothle J, the basis for the Grahams counter-application will fall away"*.

13 Finally, in paragraph 3.13(c), the Law Society points out that if full cooperation was not given, then the Law Society will consider bringing a suspension application of its own". If this was to arise, then in the least RBP would know in what respect it has failed to cooperate.

14 I submit that RBP has fully cooperated and accordingly suspension would not only be harsh, but unfair and unfairly prejudicial to RBP. The point is that if the investigation is completed, it is the Law Society and not the courts that must decide whether charges should be proffered, and if so, the disciplinary enquiry determines the guilt or otherwise of RB,

15 In these circumstances, any suspension order would be onerous, unfair and unjust. I further submit that the ambit and nature of the orders sought in the counter-application are unwarranted and would be unfairly prejudicial to directors of RBP who are not involved in any improper conduct and would, in the process, prejudice the interests of third parties, such as employees and clients

16 For all these reasons, I submit that the relief in the counter-application be dismissed with costs.

17 The main purpose of this affidavit is thus to oppose the counter-application and to submit our answers thereto.

18 Prior to doing so, I do however record the chronology of the Law Society's rulings and encouragement of its members to utilize common law percentage contingency fee agreements.

19 An eloquent and accurate statement as to the understanding of the law and practice in South Africa in August 2010, in the Profession, in respect of common law percentage contingency fees, is to be found in a paper presented by the Honourable Supreme Court of Appeal Judge Malcolm Wallis (Access to Justice Costs) at the Middle Temple and South African Conference in September 2010, the relevant pages of which are attached as annexure "**RB3**", in which he had the following to say:

19.1 "I make only a few comments from our domestic experience.

Contingency fee agreements have been relatively successful in South Africa in making personal injury litigation available to even the very poor in our community. Whilst we have a statute that regulates this topic it is badly drafted and generally ignored by the Attorneys who act on a contingency. In practical terms these attorneys conduct litigation on a "no win no fee" basis where, at the successful conclusion of a case, they will tax a conventional bill of costs (which covers a fair proportion, but not all, of their disbursements) and charge over and above a proportion, usually **25%** though sometimes less with small

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claims, of the damages recovered. The latter fee is not recoverable from the other side. Whilst there are occasional complaints of over-reaching in these arrangements, by and large, they appear to work well and people are willing to sacrifice part of their damages in return for making some recovery"

19.2 "Lastly, if something can be done to break the near universal reliance on charging by time, particularly by Attorneys, but increasingly by Counsel, that would be a good thing. Our Courts have bemoaned it as a basis for charging fees, describing it as putting a premium on slowness and inefficiency".

19.3 The learned Judge's paper was subsequently published a year later, without qualification or contradiction in the *Advocate* Journal in August 2013. "The respondents aver that if the editor of this journal was aware of any authorities gain-saying the learned Judges statements, which can only be understood as signifying that he regarded common law contingency fee agreements, to be lawful and in widespread use in the attorneys profession, he would have said so.

ULTERIOR PURPOSE

20 Van Niekerk has sought to portray "the Bobroffs", not the practice of RBP which includes second senior director Mr. Stephen Bezuidenhout, who Van Niekerk is well aware has used exactly the same common law contingency fee agreements as all the directors and professional staff of RBP - as the only attorneys amongst the Law Society's 14 000 members, who utilized common law percentage contingency fee agreements. Further, that because of this, they are to be vilified, suspended and professionally and financially destroyed. Shocking terminology is employed by Van Niekerk throughout his tirade, against "the Bobroffs", exclusively, particularly in paragraph 18 of his affidavit.

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21 Van Niekerk has been consistent in that he has always exclusively attacked "the Bobroffs" in every one of the voluminous and vexatious proceedings he has launched against the respondents during the past three years. I submit that it is inconsistent and thus unfair for Darren and myself to be singled out. In the least, I submit that this Honourable Court will ensure that we are given a fair hearing at a disciplinary enquiry to be convened at the instance of the Law Society. This will bring about a sense that we are not being victimised. At such a hearing, we will be in a position to properly articulate and ventilate our defences to defined charges.

22 The reason why Discovery has focused the attack and vendetta exclusively against Darren and myself, and in particular on the use of common law percentage contingency fee agreements, whom they referred to by way of the derogatory "the Bobroffs", has already been alluded to, and is fully set out in RBP's document "A Shocking Discovery for Discovery Members", attached as annexure "**GvN22**" to Van Niekerk's affidavit.

23. To assist the Court, I provide a brief summary. Ronald and Darren Bobroff in the course of defending RBP client Mr Mark Bellon against harassment by Discovery and its collection agents, unearthed Discovery's extensive non compliance with peremptory provisions of the medical schemes Act. such as to warrant the criminal sanctions provided for in terms of section 66 of the Act. This also included its deliberate non disclosure, of oppressive and unfair rules namely 15.6 and Annexure C to the rules, depriving members of medical care in all instances other than illness, and/or rendering the provision of such care subject to onerous conditions.

24. Further as became apparent in the case of Mr and Mrs Bellon, Discovery routinely engages in immoral bullying of members, who have sustained injury in road accidents, and their families. This includes threats to unlawfully terminate or withhold medical care, often in life and death situations, unless and until the member, or the dependant agrees to sign an undertaking to litigate, at own risk and cost against the party allegedly responsible for the occurrence giving rise to the need for medical care, and to reimburse

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Discovery free of any legal cost deduction, in full. No indemnification against an adverse costs order arising out of unsuccessful litigation is tendered.

25. I believe, and Discovery itself has confirmed, that RBP's correct criticism of Discovery's conduct has occasioned a loss of millions of Rands per annum to Discovery, and to date has probably cost Discovery half a billion Rand or more, consequent upon its members and their attorneys holding Discovery to account in terms of the Medical Schemes Act. Discovery itself admits this in Katz's threatening letter to The Law Society dated 23 February 2011(attached as Annexure "RB4), in which Katz states that Discovery's income extracted from road accident victim members, had dropped to 25% of what it had been prior to the Law Societies advisory to its members. To this must be added the obvious embarrassment of those Discovery directors responsible for Discovery's non compliance with the act and the abuse of Discovery members injured in road accidents, and their families.

26. That Katz and his employer Discovery Health would launch a similar vendetta against any other attorney who stood up to Discovery in the defence of their clients rights, was made very clear in the case of attorney Guisi Harper of the Johannesburg Firm Houghton Harper. The firms professional assistant wrote to Discovery's collection agent in response to Discovery's routine demand to his client that she sign Discovery's unlawful document ,in which the member is forced under threat of immediate termination of medical care , to agree to claim at own risk and cost against the road accident fund, and reimburse Discovery in full. He objected vigorously to this demand and stated that "The threats to withhold payment or reverse medical expenses validly incurred or paid is the worst kind of bullying tactic, when in fact client has paid for the service".

27. Katz responded promptly by telephoning Houghton Harper and informing attorney Harper's assistant that " there were a number of issues that the writer (Attorney Harper) needs to understand, further yet that if the writer did not call back she would be dragged into the issue with a " Big Firm" and reported to the Law Society". In plain language, Katz and Discovery in concert with its

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lackeys would proceed to attack attorney Harper, and her Practice in the same way as he was and continues to do do to the respondents.

28. In this regard, it appears that the Law Society agrees that Discovery is playing a key role behind the scenes in this matter. In affidavits filed in the first application, the Law Society noted that the:

"the relief (orders), provided for in the Notice of Motion (i.e. the Court Application), is essentially not sought by the Grahams, but by van Niekerk and/or Discovery, on whose behalf van Niekerk acts. It is abundantly clear that the applicants (the Grahams) play a secondary role in these proceedings)" Affidavit – 4/04/12 – Paragraph 5.16

"Van Niekerk ... is acting in interests other than those of the Applicants (the Grahams)" i.e. Discovery, which van Niekerk admits, instructs him and pays his bills; Affidavit – 4/04/13 – paragraph 5.18

"despite the obvious"- involvement of Discovery, van Niekerk attempts to explain that the applicants.... Bring the application in the interest of the public. I do not accept this contention, especially in view of the fact that the applicants legal costs in the application are paid by Discovery. It is furthermore apparent that this application is the result of a personal and highly acrimonious dispute between Discovery, assisted by van Niekerk and the third respondent." Affidavit – 04 April 2013 – paragraph 10.5.

29. The Law Society again recently felt duty bound to point out to the above Honourable Court in a matter between RBP and "the Grahams" (Discovery), that it is Discovery, not "the Grahams", on whose behalf the incessant litigation against RBP is being conducted. In an affidavit dated July 2015 by President Madiba he stated as follows:

- I am the President of the Law Society and I am authorized to depose to this affidavit on behalf of the Law Society. The contents of this affidavit, where they are within my knowledge, are true and correct. Where the

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contents are not within my knowledge, they have been made known to me and I believe in their veracity. I rely on the advice of experts and the Law Society's attorneys.

- The Law Society has indicated that it will not participate in the application in terms of Rule 30 of the Uniform Rules of Court, brought by the Bobroffs.
- The Law Society has however been provided with a copy of the answering affidavit to the Bobroffs' Rule 30 application, deposed to by attorney Anna Maria Joubert (attorney Joubert of ENS Cape Town). I am duty bound to comment briefly on two aspects that have been raised in the said answering affidavit.
- The first aspect
- "The attorneys for the Grahams appear to be unable to resist an opportunity to criticise the Law Society. Attorney Joubert has done so , yet again, in paragraph 12 of her affidavit
- Attorney Joubert repeats the allegation that the Law Society has failed in its statutory mandate as the custodian of the legal profession. I vehemently deny this allegation
- Attorney Joubert furthermore alleges that the so called "need for action" was ignored by the Law Society. This allegation is, likewise, without merit and denied.
- Attorney Joubert's abovementioned allegations are not appreciated by the Law Society. They are factually incorrect, contemptuous and irresponsible. The Law Society reserves the right to reply to the said allegations in more detail at the appropriate time and in the appropriate forum.
- The second aspect
- The second aspect is the reference by Attorney Joubert to the involvement of Discovery in these proceedings. She oddly and inappropriately refers to Discovery's "apparitional role" in the proceedings. She, in addition, refers to the Bobroffs' references to Discovery and its involvement as "prolix"
- The active involvement of Discovery in these proceedings is well known by now. Although Discovery's involvement was previously

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denied by attorney van Niekerk under oath, it now appears to be common cause.

- Discovery's involvement is very relevant to the proceedings, particularly to the counter-application and impacts on the substance thereof.
- Should the counter-application be allowed to continue, alternatively should a similar application be brought by Attorney van Niekerk, the Law Society will in its answering affidavit disclose to the Honourable Court the true facts concerning Discovery's involvement in the matter, the nature and extent thereof, its effect on the proceedings and its consequences for those involved.
- In respect of the relief sought in the notice of motion to the application in terms of Rule 30, the Law Society abides by the decision of the Honourable Court.

30. The respondents submit that the current "Counter-Application", and all the allegations made therein, should be treated with the utmost caution and sceptism, having regard to what is stated above.

31. The Law Society has previously in affidavits deposed to in the first application by "the Grahams" pointed out that all the substantive affidavits were in fact signed by van Niekerk, Discovery's attorney, and not by the ostensible applicants, the Grahams.

32. The Grahams have also not attended the disciplinary committee hearings scheduled in 2012 and 2013, nor were they present in Court during the three day hearing in January 2014 of the first application purportedly brought by them.

33. However, and I submit most significantly, Discovery's Katz was present with what appeared to be his entire staff contingent, together with Millar and all his professional staff at the hearing referred to above.

34. The respondents, and as referred to above the Law Society contend that the real applicant, both in the first application, and in the current counter-

application is Discovery, and for that reason Katz on behalf of the real applicant – his employer Discovery has been present during every hearing of every application in the so called Graham matter, so that he can instruct his clients attorney, van Niekerk and Counsel. Respondents are in possession of numerous photographs of Katz in Court engaging, with, and no doubt instructing his employers attorney and Counsel.

35 i attach as annexure RB5 just one such photograph showing Katz in earnest discussion with Discovery's three Counsel during the Rule 30 hearing in 2015. I also attach as RB5a a photograph of Discovery's proxys and accomplices in its vendetta against me being Messrs Millar, Berger, Katz's assistant Mr. Krawitz, Beamish and Cora van der Merwe in court as well.. This has also been the case in every matter against us by the "Grahams", and vice versa where Katz and his staff have been present in every matter against us by Millar.

LEADERS OF THE PROFESSION HAVE CONSISTENTLY IN THE PAST DEFENDED COMMON LAW CONTINGENCY FEES

36. Prior to detailing the chronology referred to at the commencement of this preliminary issue, it is appropriate to note the status and credentials of some of the leading Law Society Councillors, who have since 2002, promoted and defended common law contingency percentage fees.

37. **Mr. C P Fourie**, since 2002 and continuously since then save for a short break of approximately one year, has chaired the Law Society's Court Practice Committee, which is regarded as one of the most important Committees of Council. **Mr. Fourie** has distinguished himself by serving:

- Twice as President of the LSNP;
- As co-Chair of the LSSA Council, and also serving as a councillor which he has done from inception of that council to date;
- As Chairperson of the Attorneys Fidelity Fund;
- As a director of the Attorneys Indemnity Insurance Company;
- As a member of the Judicial Service Commission;

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- As oft acting Judge of the High Court;
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38 **Mr. Fourie** was the author of the Law Society's 2002 announcement in Society News permitting and encouraging members to utilize common law percentage contingency fee agreements. His enthusiasm, also reflecting that of the Council, was apparent when his announcement ended off, "A good idea? for sure!"

39 **Mr. Tony Thobane**, a former President of the Law Society of the Northern Provinces, a longstanding Councillor of the LSSA, a prominent member of the National Association of Democratic Lawyers (NADEL), and oft acting Judge of the High Court. In his Presidential report for 2010 – 2011, Mr. Thobane allocates a section of his report in support of common law fee agreements. The relevant extract is attached hereto marked "**RB6**".**Mr. Jan Janse van Rensburg**, twice President of the Law Society of the Northern Provinces, a member of the Law Society's Court Practice Committee prior to 2002 to date, a Councillor of the Law Society of South Africa for more than 15 years, deposed to affidavits in support of common law percentage contingency fees in both the *Goldschmidt* matter as also the *De La Guerre* matter. In his affidavit in the De La Guerre matter, Mr. van Rensburg *inter alia* stated:

In paragraph 5.6 thereof he states:

39.1 "The fee agreement concluded between the applicant (RBP) and the first respondent on 27 November 2005 attached to the founding affidavit as Annexure 02 is a common law contingency fee agreement which is alleged by the applicant to be invalid due to the non-compliance with the Contingency Fees Act. The Law Society does not dispute that the agreement in question does not comply with the Contingency Fees Act"

In paragraph 6.1 thereof he states:

39.2 "On 21 June 2002 the Council of the Law Society made a ruling permitting its members to enter into certain

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common law contingency fee agreements other than in terms of the provisions of the Contingency Fees Act." A copy of an article in the Society News reflecting the aforesaid ruling is attached hereto as annexure "**RB7**."

In paragraph 6.2 thereof he states:

39.3 "The interest of the Law Society in the present application is to advance legal argument pertaining to the validity of common law contingency fee agreements which comply with the abovementioned requirements. Since the interest of the Law Society is limited to the aforesaid issue, the Law Society will not express a view or respond to any of the other averments made by the applicants against the first and third respondents."

In paragraph 7.1 thereof he states:

39.4 "That the same need expressed by the public and members of the Law Society and which gave rise to the enactment of the Contingency Fees Act continued to be expressed with increasing urgency with regard to the introduction of a simple, easily understood and equitable contingency fees agreement, given the perceived unpopularity and impracticality of the agreement provided for in terms of the Contingency Fees Act"

In paragraph 7.2 thereof he states:

39.5 "That consequent upon decades of screening on South African Television and cinema circuits of American legal programs depicting various forms of contingency fee litigation, for example *"Erin Brockovich", "a Civil Trial"* and others, the South African public have become exposed to the concept of simple, fair and workable American

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Percentage Contingency Fee Agreements, the Law Society has in turn been informed by many of its members that clients request that members enter into such agreements, rather than the complicated agreement provided for in terms of the aforesaid Contingency Fees Act have been discussed with the clients".

In paragraph 7.3 thereof he states:

39.6 "That given the majority of victims of all forms of wrongfully caused personal injuries suffer significant financial loss such as to render them unable to afford legal services in the normal way, an acknowledged need has arisen for assistance via common law contingency fee agreements so as to enable such victims to assert their rights to claim damages against the wrongdoer".

In paragraph 7.4 thereof he states:

39.7 "That the inequality of arms which prevails between the majority of road accident victims on the one hand and large powerful institutions such as Road Accident Fund / Insurance Companies on the other hand, speaks to a particular need for personal injury victims to gain access to justice through easily understandable and practical common law contingency fee agreements"

In paragraph 7.5 thereof he states:

39.8 "That the common law recognises circumstances under which a valid common law contingency fee agreement may be concluded. These relate to circumstances which have been dealt with in paragraph 6.1 above"

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39.9 In paragraph 7.6 thereof he states:

"That the aforesaid circumstances are in consonance with the constitutional right of persons to have access to the Court as enshrined in the Constitution"

In paragraph 7.7 thereof he states:

39.10 "Alternatively, that if it is held that common law referred to *supra* does not exist as a matter of right, it will be submitted that the common law needs to be developed in terms of Section 39(2) of the Constitution to incorporation the right to conclude a common law contingency fee agreement in the circumstances envisaged *supra*.

In paragraph 7.8 thereof he states:

39.11 "That the Contingency Fees Act, whilst constituting an admirable attempt in providing access to justice by litigants unable to afford the normal costs of litigation, has unfortunately and by virtue of its impractical and unworkable provisions not been utilized by the attorneys profession to any significant extent"

In paragraph 7.9 thereof he states:

39.12 "That the working of the Contingency Fees Act is ambiguous and problematic. A straight percentage fee is not provided for, but rather a complicated formula in which the attorney is initially required to stipulate a so-called *normal fee*. In terms of Rule 80 of the Law Society's Rules an attorney's normal fee is subject to a whole variety of parameters and this provision in itself

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would no doubt give rise to endless disputes in the context of a contingency fee agreement"

(Supreme Court of Appeal Judge Malcolm Wallis was of the same opinion)

In paragraph 7.13 thereof he states:

39.13 "That the Law Society's ruling on common law contingency fee agreements has been followed by at least the Law Society of the Free State and the Black Lawyers Association."

In paragraph 9.1 thereof he states:

39.14 "In 2006 the Law Society conducted a survey amongst its members. A copy of the Law Society's letter containing the relevant questions and answers are attached hereto as annexure "**RB8**".

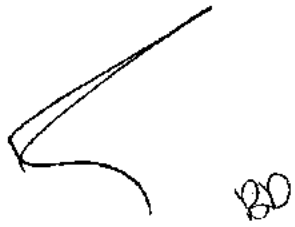
In paragraph 9.2 thereof he states:

39.15 "The relevant questions and the average response thereto are."

In paragraph 9.2.1 thereof he states:

39.16 "What percentage of Plaintiff's in your practice has a need of assistance by means of a common law contingency agreement in order to assist their claims in Court?"

Answer: 94.94%"



"In what percentage of cases administered in your practice is a common law contingency fee agreement utilized?

Answer: 76.4%"

In paragraph 11 thereof he states:

39.17 "It is submitted that in the light of the impracticality arising from the Contingency Fees Act and the need for a workable alternative, common law contingency fee agreements may validly be concluded within the stated recognised parameters."

40. **Mr. Clem Druker** former, long serving Cape Law Society Councillor , author of a textbook on contingency fees, and former Chair of the LSSA Contingency Fee Committee, after years of differing with the Law Society, and the Free State Law Society's view that straight 25 percent common law contingency fees were in the public interest, authored an announcement on behalf of the Cape Law Society, in the LSSA's 2011 Annual General Report, a copy of which is attached as "**RB9**" in which he stated :

"Given the fact that the Cape Law Society Council is now prepared, in principle, to side with all the other bodies which recognize common law contingency fees....."

41 It is submitted from my own knowledge, that Discovery's so called Panel attorneys also used common law percentage contingency fee agreements.

42. I annex one of such agreements as be "**RB10a**". A host of legal practitionerson Discovery's Panel of Attorneys used common law contingency fee agreements. These include Munro Flowers & Vermaak, Israel Goldberg Attorneys, Hirschowitz Flionis, Norman Berger & Partners Inc, Clive Unsworth Attorneys, Potbielski Mhlambi Attorneys, Levin van Zyl

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Inc, Wolmarans Inc, Riette Oosthuizen, Wilsenach van Wyk, Gert Nel Inc., all being Attorneys practising under the jurisdiction of the LSNP. It is in these circumstances unconscionable that we are targeted by Discovery in violation of the principle of fairness and consistency.

43 I also attach as Annexure "**RB10b**" and "**RB10c**" copies of the common law percentage contingency fee agreements of two well known firms of Attorneys who advertise extensively, and from which it will be noted that the one firm contracted for a 25% contingency fee and the other for a 33.3% contingency fee. I make reference to these agreements so as to illustrate the norm in the profession up to the judgement by the Constitutional Court in February 2014. "Similarly, the respondents aver that Discovery did not send to Discovery's members, who were injured in road accidents and who were clients of Discovery's Panel Attorneys, the same letter which Discovery sent to RBP's clients, inciting them to challenge their common law contingency fee agreements. This belies the allegation made by Mr van Niekerk in his founding affidavit that "the Grahams" (actually Discovery) are acting in the "public interest". In truth and in fact they are acting exclusively against the respondents in pursuance of Discovery's vendetta against the respondents.

SECOND BITE AT THE CHERRY

44. I also point out to the Court that this is not the first time that the Grahams, represented by the same set of attorneys and with respect sponsored by Discovery, have brought proceedings in the High Court against Darren and me. In October 2012 and in proceedings before this Honourable Court, the Grahams claimed the following relief:

*"1. Declaring that the second, third and fourth respondents have a duty to cooperate fully with the first respondent and/or this Court in relation to the complaint lodged by the applicant with the first respondent on the 3 June 2011 (**"the complaint"**), including a duty to provide the applicants and the first respondent and/or this Court with the information detailed*

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in the applicants' Requests for Outstanding Information dated 28 February 2012;

2. *Declaring that the third and fourth respondents have a duty to confirm their answering versions under oath, and to provide the relevant confirmatory affidavits necessary for a proper ventilation of the truth in relation to the complaint;*

3. *Declaring that the first respondent has a duty to do all things necessary under the Attorneys Act 53 of 1979, including:*

   a. *Requiring the third and fourth respondents to place their versions under oath in response to the complaint;*

   b. *Requiring the second, third and fourth respondents to provide confirmatory affidavits in respect of any hearsay evidence they tender in their versions; and*

   c. *Utilizing its powers of inspection under the Attorneys Act to conduct an inspection of the second, third and fourth respondent's Trust Account.*

And

4. *Directing that the second, third and fourth respondents without delay, and no later than one month from the date of this order, provide to this Court the information detailed in the applicants' Request for Outstanding Information dated the 28 February 2012;*

5. *Directing the first respondent forthwith to conduct an inspection of the second, third and fourth respondents' Trust Account and to report the findings of that inspection to the applicants and this Court by no later than one month from the date of this order;*

6. *Issuing a rule nisi on an expedited date to be determined by the Deputy Judge President calling on the third and fourth respondents to show cause why:*

   a. *They should not be struck off the roll of Attorneys and Conveyancers; and why*

   b. *They should not be ordered to pay the applicants' costs on the Attorney and client scale;*

7. *Pending the return date of the order in prayer 6, the second and third respondents are suspended from practice as Attorneys and conveyancers.*

   Alternatively to prayers 4, 5, 6 and 7;

8. *Directing the first respondent properly and effectively to carry out its duties in respect of its investigation of the complaint, including through recourse to the powers at its disposal to initiate an inspection or an investigation in terms of the Attorneys Act in response to the Faris Report dated 22 August 2012;*

9. *Directing that any defence by the second, third or fourth respondents be put under oath, and that any hearsay evidence in their answering affidavits be confirmed by appropriate confirmatory affidavits;*

10. *Directing the second, third and fourth respondents forthwith to produce or provide access to the applicants and the first respondent the information contained in the applicants' Request for Outstanding Information dated 28 February 2012;*

11. *Directing that the respondents, with due regard to their duties as declared in prayers 1, 2 and 3 above, report this Court within 30 days of the date of this order on the steps taken by them to comply with their respective duties under the Attorneys Act;*

Additionally:

12. *Granting the applicants further and alternative relief;*

13. *Ordering the respondents jointly and severally to pay the costs of the application on the Attorney and client scale, the one paying the other to be absolved.* "

45 persist that this application is a re-hash of Grahams' failed application and I ask this Court in the exercise of its discretion to have regard to the *Mothle* judgment, and to render a finding that this application is moot.

46 I now proceed to answer the specific allegations made in the founding affidavit by Van Niekerk in support of the counter-application, where I am able to do so. In this context, I am mindful that I am not required to deal with matters that may unnecessarily and unduly implicate me in conduct in respect of charges which have not been proffered against Darren, me or RBP. I do not, in this context, wish to undermine the Court, but I am alive to the issue that the Grahams / Discovery and its legal team and those sponsoring them are at the very least on a fishing expedition. I accordingly reserve the right to amplify my case at the appropriate time in the appropriate forum.

AD SERIATUM RESPONSE TO VAN NIEKERK'S AFFIDAVIT

Ad paragraph 1

47 The respondents admit the first sentence of this paragraph. The respondents dispute that Van Niekerk is *de facto,* the attorney for Matthew and Jennifer Graham, that he is instructed by them, and that his fees and disbursements are paid by them. It is the respondents', and the law Society's case, that Van Niekerk represents the interests of Discovery and the Grahams are the conduit for Discovery pursuing its own vendetta against Darren and me.

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Ad paragraphs 2 TO 5

48 We have to deny that all averments of Van Niekerk are true, the remaining contents of these paragraphs are noted.

Ad paragraph 6

49 disagree with the contents of this paragraph The Law Society is actively pursuing an investigation against the respondents, and the Grahams/Discovery, on the other hand, are seeking, that this Court usurps the Law Society's function.

49.1 The Law Society's application was to obtain clarity as to whether the *Mothle* order was intended to be limited to De La Guerre and Graham accounts, or a wider inspection by the inspectorate. This clarification application, at the instance of the Law Society, has been - literally speaking - hijacked by van Niekerk in the name of the Grahams, in the form of a counter-application in which the Grahams intend to convert the purpose of the disciplinary hearing, (if any) as forming part and parcel of the counter-application.

49.2 It is noteworthy that there are no averments in the Law Societies application, in support of an order, "to suspend the Bobroffs from practice while the necessary investigations and disciplinary proceedings are completed". Indeed all the Law Society has sought in its application is an extension of time within which to comply with Mothle J's order, and effectively a declarator as to the meaning of such order. In this regard see Annexure 11 to the Law Society's application being the letter from their attorneys, Rooth and Wessels, dated 11 February 2015 to the respondents attorneys Messrs Webber Wentzel." clearly shows that the Law Society was itself uncertain as to the scope of the

order in that it proposed in its attorneys letter referred to, that the Court be approached for a declarator in this regard.

50.1 The main thrust of the Counter-Application is that, by using common law contingency fee agreements, the third and fourth respondents caused harm to the "public" and that such conduct requires "urgent steps to protect the administration of justice and the public from further harm arising from the Bobroffs' conduct".

50.2 Given that it is common cause that the Law Societys members utilise precisely the same agreements as RBP utilised, it is surprising and noteworthy that the same relief has not been sought against the 74% of the 14 000 members of the Law Society who reported that they exclusively utilised common law contingency fee agreements. See in this regard paragraph 5.2 of the affidavit filed in Court by the former Law Society president, Mr Janse van Rensburg, attached as Annexure '**RB12'.** It is noteworthy that the applicants have focused their vindictiveness only against the respondents. This belies the applicants' allegation that they are supposedly acting "in the public interest"

Ad paragraphs 7 AND 8

51. Even though the respondents having being advised in consultation by their former legal representatives, and accordingly *bona fide* believing that their interpretation of the orders granted by Justice Mothle were correct, or that it was highly arguable that their interpretation was correct: the respondents decided to invite the Law Society to conduct an unfettered inspection of their books of account. Law Society auditors, Mr. A Reddy and Ms. P Mapfumo spent almost three weeks in the respondent's offices and were afforded full co-operation. Subsequently two letters were received from Mr Reddy requesting an extensive amount of further documentation, which has been

furnished to him. In this regard, I refer to annexure RB2 attached hereto in which the tender is made.

52. The respondents have also agreed to allow an independent IT expert, if and when appointed by a committee of the Law Society, to examine RBP's computer system. For the record the Law Society has never requested the respondents to provide access to their IT system, and hence there has never been any refusal to permit such access to the Law Society. For this reason, the respondents have decided not to seek leave to appeal to the Supreme Court of Appeal against paragraph 2 of the order made by Justice Matojane in his judgment dated 17 March 2005, Third and Fourth respondents are however considering appealing the contempt finding in the Constitutional Court

53. It is noted that the Law Society at no time prior to the order by Justice Mothle ever sought to conduct an inspection of the respondents books of account, which is understandable, as there never were, and are not any allegations that the respondents have ever failed to account for any monies received by it. The respondents always received an unqualified audit report, continue to receive same, have always held fidelity fund certificates, and have regularly been awarded certificates by the Attorneys Fidelity Fund in recognition of the high interest paid by the respondents to same.

54. It is a matter of record that the Law Society both in its opposing affidavits and in argument in the first application, vigorously opposed the attempt by Discovery/Van Niekerk, through the use of the Grahams, as proxy applicants, to force it to inspect RBP's books of account.

Ad paragraphs 9 AND 10

55. The respondents deny that the Grahams were victims of the respondent's alleged misconduct, or that there was any misconduct. These issues are the subject of unproved allegations, by Van Niekerk. The Law Society's disciplinary proceedings have not been finalized despite strenuous efforts by

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the respondents in concert with the Law Society to have a disciplinary hearing take place.

56. Despite the Law Society having agreed with Van Niekerk in writing well in advance that hearings would take place before a disciplinary committee on the 28th November 2012 and 8th June 2013, Van Niekerk engineered postponements of both these hearings by way of applications launched the day or so before each proposed date. Van Niekerk also launched the first Graham (Discovery) application against the respondents and the Law Society, thereby avoiding a disciplinary hearing at which the Grahams will have to testify; instead pursuing a relentless paper war against the respondents.

57. The Grahams, the complainants at the Law Society and the purported applicants before this Court, were conspicuously absent from both the proposed disciplinary hearings, as also from the three day hearing of the first application on 27, 28 and 29 January 2014. All of the substantive affidavits in the first application and in the plethora of interlocutory applications launched in the name of the Grahams, against the respondents, were made by Van Niekerk and not the Grahams.

58. The respondents admit the terms of the judgment of Justice Mothle which was handed down on the 15 April 2014.

Ad paragraph 11

59 The respondents deny that the Grahams are acting in the public interest. The respondents and the Law Society have repeatedly pointed out that the Grahams are mere pawns in the hands of Discovery, which is pursuing a relentless vendetta against Darren and me. The Grahams have never denied that Discovery is paying all the legal costs which are being incurred in their names in these and related proceedings; and in which Discovery has instructed and paid for the fees of three silks, two Senior Junior Advocates, three ENS directors and a professional assistant. A simple calculation of the approximate Fees of the aforesaid virtual *legal army*, in respect of the never

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ending fountain of litigation emanating from Discovery/Van Niekerk, will not yield a figure of much less than R20 - 30 million having being spent by Discovery, in its relentless determination to wreak revenge on Darren and I, by destroying RBP and the practice, This because we exposed its unlawful and immoral conduct, in the course of our ethical duty to fearlessly and properly advise our clients

60. Significantly, despite the relentless media campaign which has been conducted against the respondents by Discovery itself, through its agent, Mr Beamish, Discovery's media agency - *Create a Stir* – and Discovery's letters to RBP clients seeking to incite them against RBP: there has not been a single complaint to the Law Society against RBP, save for those by former RBP clients who were induced to complain, by Discovery and or Beamish and or attorney Anthony Miller, with the promise that they would receive more money from RBP. In the case of the Grahams, Discovery has also undertaken to waive its claim against them for R327 000.00 if they collaborated with Discovery's attorneys.

Ad paragraphs 12 AND 13

61. The respondents deny that it is imperative or appropriate for the Law Society to take action in all or indeed in any cases where the respondents have made use in the past of common law contingency fee agreements, or indeed against any one of the 74% of the Law Society's14,000 members who have in the past reported exclusively using common law contingency fee agreements. These agreements had been sanctioned by the Law Society in 2002, and were only finally found to be invalid in 2014 when the Constitutional Court refused an application by the South African Association of Personal Injury Lawyers ("**SAAPIL**") to appeal against the full Court judgment of this Honourable Court.

62. If any particular client or former client of RBP, or indeed any one of the Law Society's 14 000 members clients feel aggrieved by the fees which were charged to them by their attorneys, they have on a number of occasions which are referred to in Van Niekerk' s affidavit exercise their rights. Each and every aggrieved person has legal remedies to pursue

alleged unjustified fees paid to their attorneys, and not only to reclaim this but to pursue, if there is merit in such, complaints in the Law Society.

63. Van Niekerk's reference to members of the public needing financial assistance because they have "limited financial resources" is incorrect, Van Niekerk is well aware that Millar acts on contingency in respect of every one of the clients, on whose behalf proceedings have been launched by him against RBP to recover contingency fees charged by the respondents in accordance with law society complaint mandates.

64. .The very fact that several former clients of the respondents have instituted proceedings in the High Court against the respondents relating to the the contingency fees, which were charged to them by the respondents, demonstrates that the clients and former clients of the respondents have their own individual remedies. There is no valid reason why Discovery should champion the clients, and former clients, of the respondents other than the fact that Discovery is pursuing a vendetta against Darren and I for Discovery's own illegitimate reasons.

65. I point out that that Discovery' claim that it is acting in the public interest, is deceptive. There are a number of matters in the High Court involving other law firms being sued for alleged overreaching based on common law contingency fee agreements, which agreements have been declared as invalid by the highest Court in this land. These are taking their ordinary course and Discovery has only earmarked the respondents because of their personal agenda against Darren and I.

66. .The respondents were not the only firm using common law contingency fee agreements.

67. .I have already pointed out that some 74% of the LSNP's 14 000 members reported using such agreements, and a number of firms to my knowledge have massive practices comprising thousands of road accident victims, and where their common law fee agreements routinely stipulated for a contingency fee of 33.3% or more of the monetary result obtained. It is

noteworthy that every single former RBP client, who has been referred to, did not spontaneously resolve to challenge RBP's common law contingency fee agreement, but were induced by Discovery or Beamish to consult attorney Millar on the basis that easy money was to be had from the respondents. See the affidavits attached hereto as annexures **"RB13a** and "**RB13b**" by RBP's clients Martha Kock and Clint Coleman, in which they deposed as to how Mr. Beamish sought to induce them to consult Mr Millar on the basis alleged herein

Ad paragraph 14

68. .Respondents deny that they have ever sought *male fide* to obstruct the Law Society from carrying out its role as the controlling body of the Attorneys profession. The respondents have sought in common with the Law Society to facilitate the hearing of the 'so called' Graham complaint, but despite two dates being arranged by the Law Society with Van Niekerk months in advance he engineered postponements of the hearings scheduled for 28 November 2012 and June 2013.

69. It is clearly apparent from Discovery's letter dated 13 May 2014 sent to RBP's clients - , and extensive enquiries made by respondents with numerous other Plaintiff Attorneys have confirmed that none of their clients reported receiving such a letter - that such letter was sent only to RBP's clients in an earlier attempt to engineer a class action against the respondents. This attempt is similar to Discovery's present attempt to achieve the same result via the current Counter-Application.

70.

70.1 Mr. van Niekerk, and his clients, Discovery are aware that various other Attorneys have had their common law contingency fee agreements challenged by Discovery's chosen attorney Mr Millar, and by one or two other Attorneys. They allegedly regard the use of such agreements as serious misconduct, such that it is "imperative for the Law Society to take urgent and protective action in respect of past clients of RBP – members

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of the public – most of whom probably do not realise that the common law contingency fee agreements that they were convinced to sign are illegal and that they were , in all likelihood, overreached, is obvious"

70.2 Indeed, van Niekerk would clearly be aware, directly via his fellow Discovery attorney Millar, as also from wide spread media reports that Millar attacked the common law percentage contingency fee agreement of Attorney Selwyn Perlman of Fluxmans Attorneys Johannesburg. The case in question is Levenson v Fluxmans Incorporated (14/27502)(2015) ZAGPJHC 48; 2015 (3) SA 361 (GJ) (27 March 2015).

70.3 It is however striking that Discovery / van Niekerk and "the Grahams" as purported champions of the public interest, have not urged the Law Society or the Court to order what is effectively a similar class action against Fluxmans or Mr. Perlman who apparently had a significant personal injury practice, and against such other attorneys. Interestingly, a major action was launched against one of Discovery's own panel attorneys in Durban and of which Katz and van Niekerk will obviously be aware of. I will not mention the name of that attorney for whom I have the highest professional regard and who I certainly do not believe was guilty of any form of professional conduct in charging a common law contingency fee for a job well done. However, all the aforesaid belies the truthfulness of the statement, which I have quoted, and reveals their true motive which is as Katz has brazenly publicly stated – to destroy the Respondents – "no matter what it takes or costs".

71. The respondents wish to emphasise that we do not criticise these colleagues in any way whatsoever for their previous use of the Law Society approved common law contingency fee agreements. The respondents simply state these facts in support of the allegation that Discovery is pursuing a personal and unjustified vendetta against the respondents.

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72. I submit that the difference of opinion between RBP, in accordance with advice received in consultation with its legal team, and the Law Society was *bona fide*. This is further apparent when the Law Society proposed to our attorneys that a declarator be sought with regard to the meaning of Justice Mothle's order.

73. As appears from the letter which is annexed hereto marked "**RB2**", the respondents deny that they are obstructing the Law Society from carrying out its role as the controlling body of the attorneys profession and that they have invited the Law Society to conduct the inspection sought by it, and which has already been completed.

Ad paragraph 15

74. The respondents deny that they are obstructing the disciplinary processes of the Law Society.

75. Van Niekerk refers to a "*multitude of complaints*" by the respondents' clients. The respondents are only presently aware of those by De La Guerre , De Pontes and Motara, who the respondents contend were instigated by Discovery and or Miller or Beamish. Every single court application attacking RBP's Law Society compliant common law contingency fee agreement has been from the same source ie Millar. The respondents have submitted affidavits by its former clients Martha Kock and Clint Coleman, in which these clients describe how attorney Millar and another of Discovery's proxies, Anthony Beamish, who modestly describes himself as an "activist investigative reporter" sought to tout them to Millar. Attached are the affidavits by Martha Kock and Clint Colman marked annexures "**RB10a**" and "**RB10b**".

76. .The South African Association of Personal Injury Lawyers SAAPIL (which represented most of the leaders of the plaintiff personal injury legal fraternity and whose *locus standi* has been recognised by the Courts on the numerous occasions it has litigated in this Court and in the

Constitutional Court had reason to investigate the professional conduct of attorney Millar following receipt of complaints from members of SAAPIL.

77.

77.1 As a consequence of this investigation by independent professional investigators, SAAPIL has lodged almost 20 affidavits deposed to by Millar's former clients, as also by his former tout, Jabu Gxokwa, in which they describe how they were touted by Jabu to Millar from their beds at the Natalspruit hospital. Further, some of these clients have also deposed as to how Millar exploited and grossly overreached them.

77.2 So as not to burden the papers, I will only attach a small number of the voluminous documents that have been obtained conclusively proving Millar's longstanding and extensive touting of road accident victims from hospitals, in particular, Natalspruit Hospital. I therefore only attach three affidavits by Millar's clients who were touted by him from Natalspruit Hospital, two affidavits by independent and unrelated private investigators who interviewed Millar's touted clients and arranged for them to depose to affidavits at various police stations. Also so as to demonstrate that Millar had been touting road accident victims from hospitals for well over a decade, I attach a report in City Press Newspaper relating to Millar's client Mr. Hlanga Nonjinge relating how in 2004, "While in hospital he was approached by an agent from Norman Berger & Partners with an offer of help, he said".

77.3 I also attach a report prepared by a cost consultant, Cora van der Merwe, who had been instructed by an attorney representing one of Millars former touted clients, Mr Mashiloane, to inspect Millars file in the course of her opposing an attorney client bill of costs submitted by Millar against that client. These annexures are marked "**RB14(1) a, b, c, d, e, f, g, h, g, h respectively**".

77.4 The affidavits form part of numerous complaints lodged against Millar at the Law Society. Affidavits by a further six of Millar's clients in which they depose to having being touted in the same way as all the others were by

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Millar's tout Jabu, from Natalspruit hospital, will shortly be lodged with the Law Society. Given the fact that Millar now serves as President of the Law Society, the disciplinary department of the Law Society will be encouraged to take, meaningful, and most importantly transparent action in respect of all these complaints lodged against Millar,

Ad paragraph 16

78 The respondents repeat that their previous use of common law percentage contingency fee agreements, had been sanctioned and the use thereof was encouraged by the Law Society from 2002 and for more than a decade thereafter. Such agreements were only finally found to be invalid in 2014 when the Constitutional Court refused an application by SAAPIL to appeal against the full Court judgment of the Honourable Court. The respondents were amongst the 74% of the Law Society's 14,000 members who reported using such agreements. The respondents deny that they are continuing to charge common law contingency fees since the decision of the Constitutional Court, which found that such agreements were invalid.

Ad paragraph 17

79. The respondents deny the allegations of misconduct, which have repeatedly been made against them by Discovery, and in any event this must be dealt with by the appropriate committee of the Law Society.

80. The respondents further deny that the counter-application is the only just and equitable relief which should be granted in the matter. In fact , the Counter-Application should be dismissed with costs on the attorney and own client scale and the issues, which have been raised not by the purported applicants i.e. the Grahams , but in reality by van Niekerk , should be referred back to the Law Society.

Ad paragraph 18

81. The respondents deny each and every allegation made in this paragraph as if specifically traversed, and in particular:

82.1 That an attorney who has utilized a Law Society compliant common law percentage contingency fee agreement, in accordance with the Law Society's rulings and the principles stated in its letter dated 12 October 2011 to the then DJP Van Der Merwe, acted improperly or overreached. Van Niekerk's allegations would require the Law Society to engage in an investigation not only against the respondents but against 74% of its,14,000 members who reported using such agreements, truly an astonishing proposition.

83. Van Niekerk ignores the existence of second senior RBP director, Bezuidenhout, and this, I submit, confirms the existence of the vendetta by Discovery as only being against Darren and me. Van Niekerk is aware from discussions with Bezuidenhout and the inspection of some of Bezuidenhout's files in April 2011 that Bezuidenhout routinely and properly utilized RBP's common law contingency fee agreements.

Ad paragraph 19

84. The object of the Law Society's application was to obtain an extension of the time limits previously set out by Justice Mothle in respect of the Graham investigation and to obtain declaratory relief concerning the meaning of the order.

Ad paragraph 20

85. The very heading utilised by Van Niekerk, "*Litigation Involving the Bobroffs*", immediately demonstrates that the agenda and vendetta by Discovery and Van Niekerk focuses exclusively on Darren and me, notwithstanding that many of the thirteen matters Van Niekerk refers to, were handled exclusively by other lawyers employed by RBP, in particular:

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85.1 Ms P.Farraj ("**Farraj**") - DePontes, Ursa Fourie;

85.2 Ms V Valente ("**Valente**") - Christine Maree, Adam Hunter;

85.3 RBP director Stephen Bezuidenhout – Francisco M.D.Alves.

85.4 I did not deal with any of the client matters Van Niekerk refers to, but in my capacity as the senior director participated in the proceedings in Court applications to determine the validity of common law contingency agreements.

86. Van Niekerk was aware that the Law Society had since 2002 permitted, promoted and supported its member's use of common law contingency fees. He has been a member of the LSSA's Contingency Fees Committee together with me for many years, and is aware that the Law Society vigorously defended its rulings in an earlier instance where Millar had attacked attorney Goldschmidt's common law contingency fee agreement. The Law Society joined in as *amicus* in the *Goldschmidt* matter and recorded the reasons for its position in support of common law percentage fee agreements.

87. Van Niekerk, knowing as he does of the Law Society and the Free State Law Society's more than a decade plus support of common law percentage contingency fee agreements, now derides all attorneys who followed the Law Society and Free State Law Society rulings, as also members of the Black Lawyers Association, all of whom *bona fide* complied with the rulings.

88. Ironically, Clem Druker, then Chair of the LSSA Contingency Fee Committee on which Van Niekerk serves, announced the Cape Law Society's about turn when he stated in the LSSA's Annual Report dated 12 March 2011 attached as "**RB9**", "the fact that the Cape Law Society Council is now prepared in principle to side with all the other bodies which recognize common law contingency fees....".Significantly, Van Niekerk himself wrote an article entitled "*Door closed on Common Law Contingency Fees*" and from which it is clear that he was fully aware of the *bona fide* differences of opinion in the profession as to whether or not common law contingency fee agreements were valid. He stated – "For many years contingency fees agreements have been a matter of contention, and the questionable existence of common law

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contingency fees agreements after the enactment of the Contingency Fees Act 66 of 1997 (the Act), in particular, has led to much confusion".

89 The judgment by the Constitutional Court in the SAAPIL / De La Guerre application similarly recognised the extensive, and obviously bona fide, differences of opinion in the profession in respect of the validity or otherwise of common law contingency fee agreements.

> "Certain Law Society's made rulings allowing their members to charge in excess of the percentages set out in the Act. Uncertainty reigned in the attorneys' profession about the correct legal position in relation to contingency fees.
>
> Could these fees be charged only under the Act, or also outside its provisions?

90 RBP deny having ever charged a common law percentage fee of 40% or having overreached any of its clients. As a matter of record and during the practices 40 plus years of existence, there has never been any finding against the firm or its Directors with regards to fees or any other matters whatsoever. Attached is a letter issued by the Law Society to this effect attached as Annexure **"RB9(1)".**

Ad paragraph 21

91 Any aggrieved client is entitled to pursue complaints and litigation against RBP. There is nothing untoward in this.

92 Further, Van Niekerk is well aware that common law percentage contingency fees were the norm of amongst members of the Law Society and Free State Law Society comprising of 70% of attorneys in practice for more than a decade and to allege that fees properly earned in accordance with such agreements, comprised monies "*unjustifiably withheld*" is malicious and incorrect. As referred to previously herein Van Niekerk writing in *de rebus* clearly admits that there was confusion with regard to the ambit of the Contingency Fees Act. He is also obviously aware that the Constitutional Court was of a similar view, thereby inherently recognising the *bona* of

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attorneys who entered into common law percentage contingency fee agreements.

Ad paragraph 22

93 Save for denying that the respondents' arguments were raised "*in attempted exoneration*" of their reliance on common law contingency fee agreements, the respondents admit these allegations.

Ad paragraph 23

94. The respondents have accepted the outcome of the decision by the Constitutional Court to refuse SAAPIL leave to appeal against the judgment of the Full Court of this division. However, the respondents deny the allegation that their belief in the legitimacy of common law contingency fee agreements was "feigned" and that they have been "unscrupulous".

95 .Where Van Niekerk states in paragraph 23 of his affidavit that the arguments he alleges were raised by "*the Bobroffs*" are baseless, this must be viewed in the context that:

95.1 "The Law Society had endorsed the lawfulness of common law contingency fee agreements".

95.2 "It was only in 2014 that the Constitutional Court finally confirmed that they were unlawful; and"

95.3 "common law contingency fee agreements were common place in the field of personal injury law":

96. Van Niekerk allegations above are disingenuous as he is aware that the facts he claims to rely on are wrong namely:.

96.1 The Law Society's Ruling dated 21 June 2002 is attached to his affidavit marked annexure **"GvN1"**,

96.2 he has obviously read the Constitutional Court Judgment in the *SAAPIL/DE LA GUERRE APPLICATION FOR LEAVE TO APPEAL*,

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96.3 he would obviously have read the Law Society's affidavit by its then President, Janse Van Rensburg, filed in the De La Guerre matter, where reference is made to the fact that more than 74% of the Law Society's members responded to a survey indicating that they ***only*** utilised common law percentage fee agreements.

97. Where Van Niekerk alleges that "It is particularly opportunistic for the Bobroffs to rely on the Law Society's historical endorsement, given that Ronald himself was instrumental in orchestrating that endorsement, during his presidency of the Law Society"; He is, with respect, wrong. I understand that he and Millar obtained precise details from the Law Society, as to all the positions I occupied on the Council, the Committees of the Law Society and the dates and periods involved. At the time ie during 2002 , that the Law Society resolved to permit and encourage its members to use common law contingency fee agreements, I was an ordinary councillor of the Law Society. It was only years later, from November 2005 to October 2006 that I was President of the Law Society. The full Council of the Law Society comprising twenty four councillors, made up the 12 elected members, 6 members nominated by the Black Lawyers Association and 6 members nominated by the National Association of Democratic Lawyers, endorsed the use of such common law contingency fee agreements by its members and continued to do so for more than a decade.

98. Where Van Niekerk refers to "unscrupulous attorneys" in this paragraph, I understand him to mean the many thousands of attorneys who utilised common law contingency fee agreements. Does he also propose that the Law Society should make amends for "past wrongs" with regard to the Discovery Panel Attorneys whose names I have listed above and whom he is aware used the same contingency fee agreements as we did. Similarly is this also his proposal in respect of Attorney Millar and who has and continues to enter into such agreements with vulnerable clients touted from Natalspruit hospital.

99. With regard to the PWC case, all three Advocates from whom the Law Society secured opinions were *ad idem* that Southwood J's remarks were *obiter*. The Law Society chose to rely on the opinion of Labuschagne SC. Further, it appears that Southwood J may have had second thoughts if one has regard

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to his statements in the Mnisi case as commented on in a paper by Professor Magda Slabbert – "*The Judicial Approach to Contingency Fee Agreements*" published in 2013 (78) (THRHR). The relevant pages are attached as "RB15"The author considers and refers to the *obiter* by Southwood AJA in the PWC case, where the learned Judge adopted a very firm approach in stating *inter alia* that:

"Any Contingency Fee agreement between such parties which is not covered by the Act is therefore illegal".

100 She however notes that when the learned Judge had occasion to consider an agreement between attorney Mnisi and his client, which was clearly not in compliance with the Contingency Fees Act and was essentially a common law contingency fee agreement, the Honourable Judge did not hold the agreement invalid, specifically she states, "Regarding the terms of the Mnisi contingency fees agreement , it is respectfully submitted that Southwood J appeared somewhat ambivalent in his finding that the agreement was "clearly not covered by the (Contingency Fees) Act and the Agreement appears to be illegal". This stands in stark contrast to the learned Judges earlier *dictum*, to which he made reference, in *PWC* that "any contingency fee agreement between such parties which is not covered by the Act is therefore illegal". This *dictum* suggests that invalidity is an unavoidable consequence of a finding that a contingency fee agreement does not comply with the Act. Yet, almost six years later, in the *Mnisi* case, Southwood J was only prepared for a *prima facie* view that the contingency fee agreement was invalid, despite stating that it was "clearly not covered by the Act". Instead of making an order declaring the agreement invalid, the Judge directed the Registrar to refer the matter to the President of the Law Society to investigate, *inter alia* the validity of the contingency fee agreement and M's failure to file the affidavit prescribed by section 4 of the Act".

Ad paragraph 24

101 Finality was only reached when the Constitutional Court refused SAAPIL's application for leave to appeal against the judgment of the Full Court of this Division.

102 The Constitutional Court, I submit, clearly recognised the *bona fides* of the Law Society and its members in utilizing common law contingency fee agreements when it stated:

"Certain Law Society's made rulings allowing their members to charge in excess of the percentages set out in the Act. Uncertainty reigned in the attorney's profession about the correct legal position in relation to contingency fees. Could these fees be charged only under the Act, or also outside its provisions?

Ad paragraph 25

103 Van Niekerk is mistaken. I only became Vice President of the Law Society at the end of 2003, almost two years later.

Both rulings were announced by the then and current Court practice Chair, Mr C P Fourie, who ended off his announcement with the words "A step forward? For sure!."

The remaining contents of these paragraphs are admitted.

Ad paragraph 26

104. As stated above, Professor Magda Slabbert in her paper entitled "*The Judicial Approach to Contingency Fee Agreements*" published in 2013 (78) (THRHR) seems to suggest that Southwood J may have had second thoughts as to what he had stated in his *obiter* in the PWC case in 2004. Given the statement by SCA Judge Malcolm Wallis in 2010, recognising that common law percentage contingency fees at 25% of damages recovered were the norm in RSA at the time, and that the Contingency Fees Act was perhaps inadequately drafted and conspicuously ignored by the Profession, One may reasonably assert that the prevailing view in the profession was that common law contingency fee agreements were valid.

BD

Ad paragraph 27

105. The respondents do not dispute the allegations in this paragraph.

Ad paragraph 28

106. The respondents do not dispute the allegations in this paragraph but note that Advocate Labuschagne's opinion inherently accepts 25% as the norm. Similarly as referred to above Supreme Court of Appeal Judge Malcom Wallis did likewise. Further the Law Society in its letter to DJP van der Merwe, 12 October 2011, made it clear that a fee in excess of 25% of damages recovered was perfectly in order subject to the guidelines referred to in such letter.

Ad paragraph 29

107. The respondents do not dispute the allegations in this paragraph.

Ad paragraph 30

108. The respondents note what is stated in this paragraph, and comment that what Adv Marcus SC stated is totally at odds with what was said by Wallis SCA J in August 2010, where the learned Judge of Appeal spoke in favourable terms about the widespread use of common law percentage fee agreements, and to the contrary about the Contingency Fees Act.

Ad paragraph 31

109. The respondents admit that the Law Society procured an opinion from Adv Trengrove SC. This was done in order to obtain guidance for the attorney's profession. Van Niekerk is well aware that I was not the President of the Law Society at the time that it obtained a third opinion from Adv Trengrove SC dated 29 March 2005, which is attached as annexure "**GvN6**" to Van Niekerk's affidavit. My term as President commenced from November 2005 until early November 2006.

110. The Law Society as I recall, had difficulty in understanding how it could be permissible, and indeed praiseworthy for unregulated lay persons to enter into litigation funding agreements with litigants, in return for an unlimited percentage of the spoils, yet highly regulated and qualified attorneys would not be entitled to the same freedom of contract in their practices.

Ad paragraph 32

111. The respondents deny that the Law Society acted in bad faith and in dereliction of its duty to protect the public. Again, Van Niekerk wrongly alleges that I was the President of the Law Society Council at the time when he uses the phrase, "under Ronald's leadership", whereas Councillor C P Fourie was, and still is Chairperson of the Law Society's Court Practice Committee, and it was he who suggested that Adv Labuschagne be briefed. At the time, I genuinely believed that the opinion of Adv Labuschagne was correct, and that common law contingency fee agreements were valid.

112. Van Niekerk is presumptuous in asserting that the Law Society "confirmed its protective attitude toward the Bobroffs". In the first place, there was at the time no attack on RBP's use of common law contingency fee agreements. Secondly, why else would he refer to the "Bobroffs" given that the practice of RBP comprises of three Directors including Stephen Bezuidenhout (who is senior to Darren), and who at all times utilised exactly the same mandates as those utilised by all the professional staff of RBP.

113. Van Niekerk unfairly derides the twenty three other Councillors of the Law Society who were privy to whatever decisions the Council took at the time, by implying that they blindly did as they were told, "under Ronald's leadership".

114. Van Niekerk's allegation that the Law Society's actions "exposed the public to the grave risk of overreaching by Attorneys", is totally at odds with the views expressed by leading lawyers as has already been dealt with more fully above.

Ad paragraph 33 TO 38

115 The respondents do not dispute the allegations in these paragraphs.

Ad paragraph 39

116. The first decision of the Court, specifically dealing with common law contingency agreements in a personal injury matter, was the *Thulo* matter which was reported late in 2011. This was well after RBP had entered into the common law contingency fee agreement with De La Guerre. In fact the Law Society and its attorneys and Counsel at the date it filed its affidavit in the De La Guerre matter on 12 December 2011, was clearly not aware of any case law holding common law contingency fee agreements to be invalid, as it would otherwise have made reference to same.

117. It would seem that Supreme Court of Appeal Judge Malcolm Wallis at the time he presented his paper on legal costs in August 2010, was also not aware of any case law holding common law contingency fee agreements to be invalid, as he would otherwise have made reference to same.

118 Similarly the editor of the *Advocate Journal* must also not have been aware of any case law holding common law contingency fee agreements to be invalid, as he would otherwise have made reference to same when publishing Judge Wallis' paper in August 2011. Neither I, Darren nor RBP can be accused of not acting reasonably in the circumstances.

119. It is significant to note that even in the interpretation of the Contingency Fees Act, the learned Judges in the matters referred to differed. Morrison AJ held that plaintiff attorneys were entitled to retain for their own account, the party and party costs recovered in addition to the fees provided in terms of the Act. Mojapelo DJP held exactly to the contrary in the Mofokeng matter. These matters are referred to so as to highlight the accuracy of what was stated by the Constitutional Court in the SAAPIL/De La Guerre appeal application, as also by SCA Judge Malcom Wallis, as to the confusion in the legal fraternity, as to correct meaning of the Contingency Fees Act and the fact that it was inadequately drafted.

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Ad paragraph 40

120

120.1 It is a fact that the Constitutional Court only brought finality to the question as to whether or not common law contingency fee agreements were valid, in its judgment in the SAAPIL/De La Guerre appeal application delivered on 20 February 2014.

a. The Law Society consistently stood by its view for more than a decade, only relenting after the De La Guerre and SAAPIL matters brought certainty to the issue.

b. The respondents admit the correctness of the qualification quoted in this paragraph.

Ad paragraph 41

121 The respondents deny each and every allegation made as if specifically traversed.

Ad paragraph 42

122.1 The allegations in the first sentence are matters on which the Law Society should comment.

122.2 The respondents deny the allegation that their reliance on the Law Society's endorsement of common-law contingency fee agreements was "disingenuous" or that any attorney doing so would be guilty of misconduct. The allegation is meritless; the rhetorical question is - how could a Law Society criticise its members for doing precisely that which the self-same Law Society permitted and encouraged its members to do.

122.3 Van Niekerks *male fide* is patent where he refers to "unsuspecting members of the public". Why should any member of the public be suspicious of his/her attorney - and according to the Law Society's survey as referred to in the affidavit filed by Janse van Rensburg in the De La Guerre matter 74% of the

Law Society's members, *only* utilised common law contingency fee agreements, with their client. Similarly, to single out RBP for criticism because of its use of common law contingency fee agreements, is in the circumstances unfair and demonstrates an ulterior purpose.

Ad paragraph 43

124. This has already been dealt with above.

Ad paragraph 44

125.

125.1 These arguments are matters of semantics. The truth of the matter is that finality and certainty was only achieved when the Constitutional Court refused SAAPIL's application for leave to appeal.

125.2 Significantly, the Constitutional Court inherently accepted the *bona fides* of the Law Society and its members, including RBP, in their belief that common law contingency fee agreements were valid. The judgment speaks for itself.

Ad paragraph 45

126. The respondents do not dispute the facts stated in these paragraphs but deny that they "over-reached" De La Guerre.

Ad paragraph 46

127

127.1 The question as to whether an attorney has "over-charged" or "over-reached" a client is a matter that falls within the ambit of the Law Society's functions, which body is best qualified to adjudicate the matter. Certainly there has never been any suggestion or ruling by the Law Society that a percentage contingency fee should be based on anything other than the monetary result

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of a claim, and the reference to the percentage fee having to be an unspecified multiple of the nominal party and party fee recovered in a matter, is without merit and unknown in the profession. It is noted that Millar, De La Guerre's attorney whilst attacking RBP's common law contingency fee agreement, and lodging a complaint against RBP in De La Guerre's name, himself cynically entered into a common law contingency fee agreement with her as is apparent from their agreement, a copy of which is attached as annexure "**RB16**".

Ad paragraphs 47 TO 54

128

128.1 The respondents do not dispute the facts stated in these paragraphs, save to note that the allegations made in paragraph 53 are irrelevant.

128.2 In any event, the allegations which have been made by De La Guerre, whose evidence at the investigative committee hearing was that she made such allegations at the instance of Anthony Millar (who the respondents allege is a proxy for Discovery Health and rewarded for this by being appointed to its panel of attorneys), and that she in fact had no complaint against the respondents, are the subject of a complaint before the Law Society. The proceedings in this matter have not yet been finalised.

Ad paragraph 48

129

129.1 As a question of fact, the directors of RBP were never aware of a letter written by the former Chief Justice some twenty one years ago to the Natal Law Society, and with respect cannot understand how or why they could or should have been aware of what transpired so long ago between the Natal Law Society and the then Chief Justice.

80

129.2 It appears that Cameron J when delivering his judgment in the Headleigh Clinic case reported in 2001, and in which he held the attorneys 25 %common law contingency fee agreement in that matter to be valid, was also was not aware of Corbett' CJ's letter. Nor it would seem was the Supreme Court of Appeal Judge Malcolm Wallis, when he presented his paper in August 2012.

Ad paragraph 49

130 No agreement was entered into between De La Guerre and the "Bobroffs". This reference is again a demonstration of the vendetta against Darren and me. The agreement was between De La Guerre and RBP Inc, an incorporated Law Practice comprising of three directors, including second senior director, Stephen Bezuidenhout, who Van Niekerk regards as invisible and non-existent. The fee charged to De La Guerre in accordance with RBP's Law Society compliant common law agreement was not the amount alleged, but R761643.31 plus 14% VAT of R106630.06. Van Niekerk obviously seeks to portray the fee as higher than it was.

Ad Paragraph 50

131

131.1 The respondents do not dispute the quotation referred to in this paragraph. However RBP's directors, in common with the Law Society, the Free State Law Society, the Black Lawyers Association, Adv. E Labuschagne S.C, and Supreme Court of Appeal Judge Malcolm Wallis, genuinely believed that common law contingency fee agreements were valid. The Constitutional Court in its judgment in the De La Guerre/SAAPIL appeal, specifically recognised that there were differences of opinion in the profession on this issue when it stated, ." Certain Law Societies made rulings allowing their members to charge in excess of the percentages set out in the Act. Uncertainty reigned in the attorney's profession about the correct legal position in relation to contingency fees. Could these fees be charged only under the Act, or also outside its provisions? RBP was one of the firms which

charged more than allowed for in the Act, as the rules of its professional association allowed."

131.2 As stated above, the first decision of the High Court, holding a common law contingency fee agreement to be invalid in a personal injury claim, was the *Thulo* matter, which was reported late in the year 2011. This was years after the common law contingency fee agreement was entered into between RBP and De La Guerre.

Ad paragraph 51

132

132.1 All litigants including attorneys are entitled to exercise their rights at law, including that of appealing a decision of the Court. SAAPIL, an organisation whose *locus standi* to represent the interests of the plaintiff personal injury attorneys, has twice been recognised by the Constitutional Court – in the *Heath* matter, and in the, *SAAPIL* challenge to the constitutionality of the amendments to the Road Accident Fund Act; as also by the High Court in the *Heath* matter, and in the interdict proceedings against the RAF in respect of direct payments to claimants in the Cape High Court Most recently as well in the SAAPIL stated case regarding common law contingency fee agreements; resolved to appeal the decision referred to and did so up to the Constitutional Court.

132.2 SAAPIL'S decision to appeal, as also a similar decision by RBP, whilst not succeeding in overturning the full bench decision, resulted in the Constitutional Court clearly recognising the *bona fides* of the Law Society, the Free State Law Society, attorneys in general, and impliedly RBP in particular regarding the belief by all the aforesaid, that common law contingency fee agreements were valid.

BD

Ad paragraph 52

133 It is not understood why Van Niekerk finds its necessary to remark that it was "no coincidence" that RBP's fees equated to precisely 30% of the total amount awarded to De La Guerre, given that RBP's common law mandate stipulated for a 30% fee. The protestations of Van Niekerk showing surprise, is in the circumstances obviously intended to create some sort of negative atmosphere.

Ad paragraph 53 AND 54

134

134.1 The respondents are not aware of any Law Society ruling or Court decision requiring a common law percentage fee to bear any relationship to the minimal and decades long outdated Court tariff fees, usually recovered in respect of attorneys' fees in RAF party and party bills. Van Niekerk seeks to create the misleading impression that RBP's attorney and client fee on taxation was "R58913.46" whilst he is aware that such amount was the party and party fee recovered. As stated previously herein, and as recognised by the Law Society, the norm was 25% of the monetary result obtained, and in terms of the Law Society's letter dated 12 October 2011 to then DJP van der Merwe, attorneys were permitted by the Law Society to charge a higher percentage subject to the guidelines set out in the letter and the criteria in rule 80 of the Law Society's rules.

134.2 RBP's time based attorney and client fee bill has been drafted and it is understood that once it has been settled, the fees if doubled up, as would be the case in terms of the Act will not be far short of the fee charged to De La Guerre. In any event, De La Guerre's allegations against the respondents are the subject of a complaint lodged by Millar before the Law Society. The proceedings of the matter have not yet been finalised. At the Law Society investigating committee hearing, Ms De La Guerre denied having any complaint concerning the fee charged by RBP. This however is a matter to be dealt with by the Law Society .

Ad paragraph 55 TO 57

135 It is correct, that the contention that the statement by the Honourable Southwood J in the PWC *case* was *obiter,* in respect of the legality of common law contingency fee agreements between attorneys and their clients, were put forward by counsel on behalf of the Law Society, SAAPIL and RBP. Significantly, Advocates Marcus, Trengove and Labuschagne in their opinions supplied to the Law Society, were also of the opinion that the statement by Southwood J was *obiter.*

136 Complaints concerning overreaching must properly be dealt with by the Law Society and its committees specifically established for this purpose.

Ad paragraph 55

137

137.1 Van Niekerk again deliberately seeks to create atmosphere by the use of emotive terminology, by referring to RBP's use of Law Society compliant common law contingency fee agreements as "a stratagem", whereas Van Niekerk is aware that this was the standard agreement that was used by thousands of attorneys for well over a decade, and in accordance with rulings made by their statutory regulatory authority.

137.2 The De Pontes matter was handled exclusively by RBP senior attorney, Ms Phillipa Farraj, and not by "the Bobroffs" who Van Niekerk refers to further on in paragraphs 57-63. Van Niekerk seeks to depict RBP's Law Society compliant 30% contingency fee, as more than it was by including VAT in the fee, when he ought to be aware that VAT is not part of the attorney's fee.

137.3 Van Niekerk further attempts to create atmosphere by describing the fee as "*a staggering amount*", when such fees were common place amongst 70% of all practising attorneys, and such agreements were by implication, according to a survey conducted by the Law Society, utilised by more than 74% of its members.

137.4 Van Niekerk again seeks to create a negative connotation by stating that it was "no coincidence" RBP's fees amounted to precisely 30% of the monetary recovery made for De Pontes. Why should it be a coincidence given that RBP's common law contingency fee agreement stipulated for 30%?

Ad paragraph 56

138.

138.1 The De Pontes matter was dealt with exclusively by RBP's senior attorney, Farraj, and all fees recovered or charged were not "for the Bobroffs", but for the practice of RBP, which has always included second senior director Stephen Bezuidenhout who has been with the practice since 1976.

138.2 As stated above the respondents are not aware of any Law Society ruling or court decision which required a straight percentage fee to bear any relationship to the outdated and wholly irrelevant nominal amounts recovered as party and party fees. Given that the fee was to be a percentage of the monetary result obtained, one fails to understand how or why party and party fees recovered should be referred to. What would Van Niekerk have to say in a situation involving a lump sum settlement with no costs being recoverable? I invite Van Niekerk to disclose his fee arrangement with Discovery relating to this matter. I have no doubt this Honourable Court will find that his non contingent fee rate is substantially higher than that charged by RBP.

Ad paragraph 57 AND 58

139

139.1 Van Niekerk is obviously in possession of the pleadings in the *De Pontes* matter and is therefore well aware that is was not "*the Bobroffs*" who raised a point *in limine* but attorney P Farraj. The respondents deny that the point *in limine* was "*astounding*". As will be noted in Farraj's affidavit attached hereto as annexure "**RB17**", she was advised by senior counsel that the point be raised, given the suspicions generated by Millar's involvement and the close relationship between Millar and Adv Bitter.

RD

139.2 The respondents are unable to understand why the debiting and recovery of a Law Society compliant contingency fee should be described as "*an attempt simply to retain Anthony's money*". The monies were properly debited and recovered by RBP as fees , and in accordance with the Law Society's rulings at that time.

139.3 The respondents deny that they "*over-reached*" De Pontes whose matter was dealt with exclusively by Ms P Farraj who debited the fee in that matter or that she overreached de Pontes. The question as to whether an attorney has "*overcharged*" or "*over-reached*" a client is a matter which falls uniquely within the purview of the Law Society, which is best qualified to judge the matter.In any event, the allegations, which have been made by De Pontes against the respondents, are the subject of a complaint before the Law Society. The proceedings in this matter have not yet been finalised.

139.4 The respondents deny that the point *in limine*, which they raised, was "*astounding*", given that she was advised by senior counsel to do so. It was certainly not an attempt to retain money not due, and as stated above, the fee charged and earned by Ms Farraj was entirely in accordance with Law Society rulings and guidelines.

139.5 The respondents do not dispute the remainder of the allegations made in this paragraph.

Ad paragraph 59

140

140.1 The argument referred to herein was advanced on behalf of, RBP Inc. and not as Van Niekerk persists throughout his affidavit, "*the Bobroffs*". The respondents admit the quotation from the judgment set out in this paragraph, but as stated above, they were not aware of any judgment prior to the *Thulo* decision reported late 2011, which held a common law contingency fee agreement in a personal injury claim to be invalid.

140.2 Similarly the respondents respectfully cannot understand how it could be stated as a fact, that they knew about a letter written more than 20 years ago

by former Chief Justice Corbett to the Natal Law Society, or on what basis such categorical statement could be made.

Ad paragraph 60

141 The respondents admit the contents hereof.

Ad paragraph 61

142

142.1 The cost order was not against "*the Bobroffs*" but against RBP. The respondents admit the quotation from the judgment set out in this paragraph but respectfully refer to their submissions made hereinabove.

142.2 Given that the *De Pontes* matter was exclusively dealt with by RBP senior attorney Ms P Farraj, she was the attorney that fully explained to the investigative committee that there was no "*unexplained delay*" in payment of a portion of the capital sum to De Pontes, and that she was advised by senior counsel to serve the settlement offer on De Pontes personally given counsels view that the appointment of the curator *ad litem* was irregular and invalid.

Ad paragraphs 62 AND 63

.143

143.1 The contents of this paragraph are admitted.

143.2 It is correct that consequent upon the Court holding that the Law Society rulings and interpretation of the law with regard to the validity of common law contingency fees, which had been the norm for some 70% of all practising attorneys for more than a decade; and exclusively utilised by 74% of the Law Society's members; was incorrect and that such agreements were invalid, RBP suffered an enormous financial loss such as to completely negate its fee in this matter, notwithstanding years of competent and effective professional

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work and the expenditure of substantial amounts in respect of disbursements, and carrying the risk of all this for years.

143.3 The respondents repeat that the allegations of over-reaching, which have been made against Ms. Farraj in this matter, are the subject of a pending complaint against her, lodged by Millar with the Law Society. This is the body which is charged with determining the correctness or otherwise of these allegations

Ad paragraphs 64 AND 65

144

144.1 The respondents admit the contents of the email but deny that it was "*contemptuous*". The email was sent to various personal injury lawyers, who had a legitimate interest in receiving the information.

144.2 The purpose of the email was not to be contemptuous of the judgment but rather to draw the attention of interested lawyers and the President of the Law Society on whose authority RBP, and those of its 14 000 members who had used common law contingency fee agreements for more than a decade, to the effect of the orders made in the judgment. I reiterate that neither my fellow directors nor I sought to undermine the integrity of the Court.

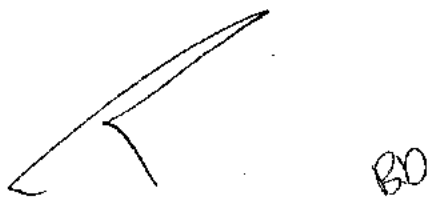
Ad paragraph 66

145 The respondents admit these allegations.

Ad paragraph 67

146

146.1 Far from being persuaded to conclude a common law contingency fee agreement, Mr Vivian insisted on this.



146.2 It was the strenuous efforts of RBP directors Darren Bobroff and Ronald Bobroff , who contacted Mr. Vivian in New Zealand to repeatedly dissuade him from his insistence on accepting the RAF's offer of R45 000.00 that resulted in his claim proceeding. But for this Mr Vivian would have received only the nett proceeds of the RAF offer of R45 000.00. Attached as Annexure RB18 is a series of emails exchanged with Mr Vivian, who had then emigrated to New Zealand, and which includes an email expressing his heartfelt appreciation for the substantial amount of money, (approximately R4.4 million) Darren had recovered for him in, circumstances where he initially insisted on accepting a settlement of R45 000.00, and later on in the claim, of R169 000.00.

146.3 The respondents, not "*the Bobroffs*" charged Mr Vivian exactly the fee which he had contracted for, that is, 25% of the monetary result plus VAT thereon. Van Niekerk seeks to make the respondents fees appear higher than what they were by including VAT, which even he must surely know is never part of the attorneys fee, but a tax payable by law to the fiscus.

Ad paragraph 68

147 After having being ostensibly referred to Millar by legal official Fourie, Vivian permitted Millar to challenge RBP's Law Society compliant common law contingency fee agreement.

Ad paragraphs 69 TO 72

148

148.1 The respondents have accepted the judgment of Justice Mokgoatlheng but deny that they intentionally over-reached Mr Vivian.

148.2 Given the fact that Mr Vivian was a *peregrinus* who was not known to have assets in RSA with which to satisfy any costs order which might be obtained against him, senior counsels advice that security for costs be sought seemed reasonable and appropriate. At that time, it was not known whether an attorney and client bill of costs in respect of RBP's time based fees, would not equal or exceed the amount charged Mr.Vivian in compliance with the LSNPs rulings.

RBP

148.3 Further it was believed, that motion proceedings were inappropriate for this type of claim, and this belief has since been confirmed in the matter of Steven Zulla *Levenson v Fluxmans Inc. Attorneys, a matter where Millar also challenged Fluxmans Attorney,Mr. Selwyn Perlmans' 25% common law contingency fee.* The Court held "*The respondent contends that motion proceedings for the recovery of an unliquidated amount of enrichment are inappropriate. The nature of the applicant's claim is primarily for a declaratory order. The facts are common cause and the illegality of the agreement has been shown. It is trite that motion proceedings are primarily intended for the resolution of legal issues. Factual disputes should be addressed in action procedure. Such factual dispute exists, but only in regard to the quantum of the applicants claim There is however no reason for this court not to separate the issues. That would ensure determination of the merits and a postponement of the quantum of the amount of the claim for later adjudication by way of referral to trial In Cadac (PTY) Ltd v Weber Stephen Products Company and others 2011 1 All SA 343 (SCA), Harms DP held (par (13) and (14))*'.

148.4 On that basis Mr Vivian would have been required to give evidence and prove that RBP had been unjustly enriched. A costs order may well have been obtained against him having regard to the inappropriate use of motion proceedings.

Ad paragraph 70

149 The respondents admit what is stated here, save to note that it is inaccurate for anyone to state that the application requiring Mr Vivian to furnish costs was "*at the behest of the Bobroffs*", given that such application was made by RBP comprising of three directors, namely Stephen Bezuidenhout, Darren and myself, and on the advice of Senior Counsel.

Ad paragraphs 71 AND 72

150 Given that RBP's fee of 25% of the monetary result obtained for Mr Vivian was entirely consistent with the Law Society's rulings, there can be no basis for alleging that Mr Vivian had been over-charged or over-reached. If it is

contended that RBP over-charged or over-reached any client because a 25% or 30% contingency fee was charged; the same allegation would have to be made in respect of 74% of attorneys practising under the Law Society's jurisdiction, as also those attorneys practicing under the Free State Law Society who also did so.

Ad paragraph 73

151 The respondents admit the allegations herein.

Ad paragraph 74 TO 79

152

152.1 Although Van Niekerk is well aware that Ms. Fourie's matter was attended to exclusively by senior RBP attorney Ms P Farraj, he persists to continuously refer to "*the Bobroffs*" throughout his affidavit in the false and malicious contention that it was "The Bobroff's" who attended to this matter. Further, he is aware that RBP is an an incorporated legal practice comprising of three directors (including Bezuidenhout). He persists in doing so in the *Fourie* matter notwithstanding that he would obviously have read the judgment and noted that the matter was exclusively dealt with by Ms P Farraj. Neither "*the Bobroffs*" nor RBP director Mr S Bezuidenhout had anything to do with this matter. Ms P Farraj is a senior, experienced, and specialist plaintiff personal injury litigator, and she does not require any supervision whatsoever. On the contrary she supervises more junior attorneys at RBP.

152.2 From the evidence given in the litigation, it became apparent that Mrs Fourie was not compelled or persuaded by Ms Farraj to agree to the settlement, but was advised by Ms Farraj and counsel in the matter Adv Justin Erasmus to accept a settlement negotiated with the RAF. The Court found there was no basis for Millar's allegation that Ms Farraj had failed to demonstrate an appropriate standard of diligence, care and skill, which could reasonably be expected of a practising attorney.

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152.3 Ms Farraj has dealt fully with the wholly unrelated query raised with regard to her attorney and client bill, notwithstanding that this was not an issue in the proceedings in question, in her correspondence with the Law Society. She has also completed the taxation of her attorney and client bill of costs, which was opposed by Millar and his cost consultant. The taxing master did not find any cause or evidence that there was anything improper in the bill as was suggested. Significantly Ms Farraj attorney and client fee was taxed at very little short of her common law percentage fee.

152.4 A reading of Mrs Fourie's evidence leaves one with no conclusion other than that she was instigated by Discovery to instruct Millar in the same way as is deposed to by Martha Kock and Clint Coleman.

Ad paragraph 80

153 The respondents admit the allegations.

154

Ad paragraph 81

154

154.1 Mr Grahams claim was litigated for almost four years in respect of merits and *quantum*, an offer of R900 000.00 was made the day before trial by the RAF. Graham and his wife were insistent that the offer be accepted but were persuaded by Darren to wait until the following day.Tthe RAFs attorneys were successfully persuaded by Darren and senior counsel to increase the offer by an additional R1 million rand.

154.2 The fee charged to Graham was a non-contingent time charge fee of R738 472.54 plus VAT. Van Niekerks malicious reference to percentages of the settlement is untrue. For illustrative purposes RBP's time charge fee of R738 472.54 less the party and party fee recovered and credited to Graham, and thereafter calculated as a percentage of the R1,979,952.00 settlement, amounts to some 34% of same. However, the fee charged was not based on a percentage on the damages recovered.

Ad paragraph 82

155

155.1 The Grahams were ecstatic at the outcome of Mr Grahams claim, which was fraught with difficulty, given merits with a very real prospect of an absolution ruling, as also the fact that Mr Graham , was a self-employed plumber and was depositing much of his income into his wife's personal banking account, rather than into the business bank account.

155.2 No complaint or enquiry was received from either of the Grahams for many months after he was fully paid and accounted to. As is stated in affidavits filed by the Grahams in the initial application brought in their names (by Van Niekerk instructed and paid by Discovery) that consequent upon a *carrot and stick* letter received by them from Discovery Health in December 2010, threatening to sue them and terminate their membership with Discovery Health on the one hand, and on the other, offering them a carrot that if they agreed to meet with Katz and Discovery Health's attorney (Van Niekerk), Discovery would waive any claim against them; that they suddenly became "unhappy" with RBP's fee.

155.3 I submit that it is obvious that the Grahams in fact had and still have no *bona fide* complaint, but are being used by Discovery to do its bidding. This was recognised by the Law Society in affidavits filed by it in Discovery's first application and where it stated "*this application has not been brought on the instance of or for the benefit of the Grahams but rather by Discovery, who is van Niekerk's true client*". It was expressly stated by the Law Society that Discovery are behind the current proceedings in its affidavit filed in rule 30 proceedings in July 2015 in an affidavit by Law Society President (Solomon Strike Madiba) which is attached hereto as Annexure "**RB19**".

Ad paragraph 83

156 The respondents admit that we withdrew from the February 2012 proceedings before the investigating committee of the Law Society as we believed and were advised in consultation with Counsel that the disciplinary department of the Law Society had already decided to prefer charges against us. The

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respondents were and are at all times willing to defend themselves against the charges which have been preferred against us.

Ad paragraph 84

157

157.1 The respondents were advised by their senior counsel that the proceedings in question would be irregular, and contrary to the principles of natural justice because members of the disciplinary committee, who were to deal with the hearing, had been placed in possession of all the evidence carefully prepared by Van Niekerk to have the maximum negative impact. After the committee had declined to accept the respondents' senior counsels submission that they were irreparably compromised and should recuse themselves, the respondents' legal representatives sought and obtained urgent interdictory relief from the High Court preventing the hearing before the compromised committee continuing.

157.2 Significantly the Law Society Council subsequent thereto, after debating the issue thoroughly, resolved that it would no longer place any evidence before a disciplinary committee so that the principles of fairness be observed.

Ad paragraph 85

158 The Law Society did appoint a new committee to deal with the matter but it and the respondents were repeatedly frustrated by Van Niekerk in having the hearing proceeding, and the matter could therefore not be disposed of on the merits.

Ad paragraphs 86 and 87

159

159.1 The respondents note the allegations and have received a copy of annexure "**GvN19**" to Van Niekerk's affidavit. The respondents deny that

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Vincent Faris ("**Faris**") is independent and that "*the Grahams*" engaged him. Faris was engaged by Van Niekerk of ENS and Millar on behalf of Discovery who paid Faris' account and both van Niekerk and Millar are acting for Discovery in the latter's own interests.

159.2 It must also be stated that the respondents are aware that Van Niekerk and Millar are in possession of and have utilised hard copy and electronic documents stolen from RBP's offices by its previous bookkeeper, Bernadine van Wyk. She had not disclosed to the respondents at any time that she had previously been convicted of ten instances of fraud by false pretences, and had been consequently imprisoned. It has since been ascertained that she has been accused of stealing R1.3 Million from an attorney by who she was employed in 2008, and I have been furnished by the attorney in question with a copy of his affidavit in which he sets out in detail how this had occurred.

159.3 .The respondents have reason to believe that van Wyk was recruited by Millar to serve as Discovery's spy and agent in RBP's offices, and we are in possession of electronic media communications between Millar and van Wyk substantiating this. Van Niekerk and Millar are invited to depose to affidavits denying that they are in possession of RBP Practice and client material, stolen, and/or downloaded onto removable electronic storage devices without permission by van Wyk, and furnished to them. Further that this material was then made available to Mr Faris. In my respectful opinion, all persons who received the stolen material knowing it to be such, or without making reasonable enquiry as to how obviously confidential material belonging to respondents was obtained, are accessories to such theft.

Ad paragraph 88

160

160.1 Prior to receipt of the counter-application, the respondents had no knowledge of the letter from Faris dated 17 June 2014, annexed as "**GvN21**" to Van Niekerk's affidavit.

160.2 It is relevant that the Faris report was not procured at the instance of the Law Society. The respondents aver that it was perfectly legitimate and in

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accordance with the principle of *audi alterem partem* for the Law Society to have afforded them an opportunity to respond to the Faris report.

160.3 Van Niekerk's experience in the Cape Law Society does not detract from that obligations of the Law Society in this matter to act fairly and exercise proper judgment in its dealings with its members.

Ad paragraph 89

161 The respondents deny that "the Grahams were forced to approach the Court for relief". I submit that the first application and the counter application are not at the instance of the Grahams, but in reality on the instructions of and for the benefit of Discovery. The respondents repeat their averments that the purpose of the Grahams' (Discovery's) application to the High Court, was to frustrate the legitimate processes of the Law Society and to shield the Grahams from having to give *viva voce* evidence, from which it would immediately become apparent that they never had any complaint, but have at all times been used by Discovery for its own purposes.

Ad paragraph 90

162.1 The disciplinary enquiry of the Law Society had already been convened to take place on 28 and 29 November 2012 when van Niekerk sprung an application on the Committee seeking a postponement on the basis that he was overseas. This, notwithstanding, that the Law Society had arranged the very dates for the hearing with Van Niekerk months before. The postponement application together with the Grahams/Discovery application to the High Court, prevented the disciplinary enquiry from proceeding despite the vigorous objections of the respondents and the Law Society.

162.2 Van Niekerk again engineered a postponement of a disciplinary hearing, the date of which was agreed between him and the Law Society for June 2013, by way of an application brought days before the "so called" Graham complaint was to be heard by the Law Society Disciplinary Committee. Again, both the respondents and the Law society objected to the postponement, which

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unfortunately was granted by the committee, thereby again enabling Van Niekerk to again frustrate the legitimate processes of the Law Society.

Ad paragraph 91 TO 93

163

163.1 The respondents admit the quotations contained in these paragraphs but deny van Niekerk's allegations or interpretations of the judgement.

163.2 Justice Mothle rejected Van Niekerk's allegation that RBP, Darren or I had not co-operated fully with the Law Society, or were in any way to be criticised, or were playing *possum*.

163.3 Unfortunately Justice Mothle did not have the benefit of the respondents' response to Faris' report, which report was procured at the instance of Discovery. The Law Society after receipt of the respondents' response thereto, did not seek an inspection of RBP's books , but chose to refer the report and the respondents' response to the Disciplinary Committee.

Ad paragraph 94

164

164.1 It is denied that the respondents intentionally failed to comply with the Court order, or that they failed to cooperate fully with the Law Society's Inspectors. It is clear from the letter addressed to the respondents' then attorneys by the Law Society's attorneys on the 11 February 2015, that the Law Society itself was not sure as to the exact meaning and ambit of Justice Mothle's order. For that reason, it was suggested in the letter that the Law Society was considering approaching the Court for a declarator.

164.2 Although the respondents believed and were advised in consultation with Counsel that they were justified in seeking leave to appeal against certain of the orders made by Justice Mothle, the respondents nevertheless resolved to tender RBP's books of account to the Law Society as set out in annexure **"RB2"** attached hereto. The respondents do not intend to frustrate

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the functioning of the controlling body of the Attorneys' profession. This was never the case, and the respondents' full cooperation was deposed to by then President Mabunda, in affidavits filed by him in the first application.

Ad paragraph 95

165 It was not "the Bobroffs" who applied for leave to appeal, but RBP Inc, and the affidavit in support of such application was signed by RBP's director, Stephen Bezuidenhout, on behalf of RBP.

Ad paragraph 96

166 It is correct that the respondents did not appeal against paragraph 2 of the order requiring that a hearing before the Disciplinary Committee take place within 60 calendar days of the order, as RBP had repeatedly sought to have the hearing take place so as to demonstrate that the "complaint" was without merit.

Ad paragraph 97

167 The respondents admit the quotation as stated in this paragraph.

Ad paragraphs 98 TO 100

168 The respondents' application for leave to appeal was *bona fide* and was drafted by and based on advice received from its legal representatives. In any event, although the respondents believed and were advised by their representatives in consultation that they were justified in seeking leave to appeal against certain of the orders made by Justice Mothle, RBP elected to tender inspection of its books of account to the Law Society as set out in annexure **"RB2"** hereto.

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Ad paragraph 101 TO 103

169

169.1 The respondents have no knowledge of the expectation of Mr Harris that he will recover an amount of R1 800 000 from the respondents, as the respondents are not privy to this expectation. The remaining allegations in these paragraphs are admitted.

169.2 RBP's fee R1731180.00 was charged in terms of a Contingency Fee Act agreement. The fee was not the amount reflected, which included VAT of R281 820.00, which is obviously not for the respondents benefit but a tax payable by law to the fiscus. Based on Van Niekerks allegations, RBP having put in hundreds of hours of professional time, paid or incurred disbursements of hundreds of thousands of Rands, and litigated Mr Harris's matter for a number of years in the High Court, should end up not only receiving any fee at all, but having to pay in money for the privilege of serving Mr Harris, at their own risk and cost. This is surely an unfair result having regard to the professional good faith service to Mr. Harris, who received an outstanding result at no risk or upfront cost to himself.

Ad paragraph 104

170 It is correct that the respondents' senior professional assistant Ms Vanessa Valente represented Ms Maree in a medical negligence matter. Following on years of risky and expensive litigation, on contingency, involving hundreds of hours of professional time and the engagement of senior counsel and numerous and expensive experts , the matter was settled days before trial.

Ad paragraph 105

171 This is the subject-matter of oral evidence presently before Spilg J. Attorney Valente dealt exclusively with the matter charged a fee and accounted to Ms.

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Maree in terms of the agreement entered into with Ms. Maree in terms of the contingency fees act. I am advised that if need be the agreement will be tendered for inspection, and a copy will be furnished upon request to the Court.

Ad paragraph 106

172

172.1 The respondents admit that their former client Ms. Maree has via Millar challenged the fees charged to her. They have no knowledge of what Ms. Maree's expectations are and dispute that she is entitled to any money whatsoever. Ms. Maree who was most satisfied with the outcome of her case which was handled exclusively by RBP Attorney Ms. Valente, was incited by former RBP employee Ms. Cora van der Merwe to challenge Ms. Valente's fee as also the fees of the respondent 's correspondent's Pretoria Attorneys Messrs Friedland Hart Solomon Nicolson. The Respondents believe Maree was touted to Millar by Ms. Van der Merwe, who represents her in a number of matters, and co tweets with Millar malicious attacks on the directors and staff of the respondent.

172.2 Consequent upon Ms. Van der Merwe's conduct, her ex husband was obliged to obtain a protection order against her, and which is still in force. Similarly RBP employee Ms. Joan Burger was likewise obliged to obtain such an order.

172.3 Van der Merwe was initially an independent contractor who approached respondents to draw and tax their bills of costs. At her request, she subsequently became employed as an in-house costing clerk / cost consultant, and subsequently after her persistent requests, was registered as a candidate attorney with the firm. She operates under various names in the social media including Cora van der Merwe , Cornelia van Niekerk and Cortjie.

172.4 Consequent upon strange behaviour on van der Merwe's part, including the disappearance and re-appearance of files and documents entrusted to her, as also reports made by RBP staff as to her bizarre behaviour, which included complaints by her that she constantly heard voices in her head, would wake up paralyzed and wholly unable to move or speak and so on, it was decided to instruct forensic investigator Mr. Paul O'Sullivan.

172.5 Van Der Merwe confessed to O'Sullivan on the13th October 2014 that she had stolen and emailed the confidential and proprietary information of the respondents, to Beamish and that she had done so at the instance of Beamish, with whom she had formed a conspiratorial relationship,. She also admitted that the electronic files she had sent to Beamish, freelance journalist, were the confidential and proprietary information of the respondents. She further admitted that her letter of appointment contained a confidentiality clause and that she had unlawfully breached this.

172.6. In August 2014 she purported to confide in me that by virtue of her training as an employee with the South African Navy in counter espionage, and also by virtue of her studies at a Russian university, she was skilled in manipulating people into trusting her and thereafter confiding in her. She claimed to have used these skills in developing a relationship with Beamish and consequent thereto he had forwarded to her an ongoing stream of many emails, "whatsapp"'s and messages and emails that she had received from other persons.

172.7 She volunteered to make whatever was available on her phone to me and to bring into the office her laptop on which she said there was more material, as well as her other phone which was in for repair, and which had also contained communications with Beamish. True to her word she immediately forwarded and printed numerous communications between her and Beamish. An indexed file of these communications has been prepared and will be made available to the Court if so requested.

172.8 Reliable information has been made available to the respondents that Beamish was at one stage living with van der Merwe, and it is a matter of record that she subsequently assisted him in the production of the biased and malicious Carte Blanche attack on me and RBP. As I mention subsequently, Beamish at the time had taken up employment with Carte Blanche for the very purpose of this attack.

Ad paragraph 107

173 Van Niekerk is well aware that Ms Maree was informed by Senior Attorney Ms Vanessa Valente that common law agreements were under attack and that Ms Valente required her to sign an agreement in terms of the Contingency Fees Act on which to base her fees, in the event that common law agreements were ever held to be invalid. As was subsequently the case, Ms. Maree was charged and accounted to in accordance with the contingency fees act agreement.

Ad paragraphs 108

174 Instructions were received from Miss Motara who signed an agreement in terms of the Contingency Fees Act.. Subsequently a further agreement in terms of the Contingency Fee Act was entered into between Miss Motara and the respondents. The agreements are tendered for inspection or copies thereof will be furnished upon request.

Ad paragraph 109

175 After years of litigation at RBP's risk and cost, Miss Motora's claim was settled at Court on 17 February 2014 and she was charged fees strictly in accordance with her agreement with RBP in terms of the Contingency Fees Act.

Ad paragraph 110

176 Miss Motara has perjured herself in an application launched by Millar against RBP, the matter has been heard and judgment has been reserved.

Ad paragraph 111

177

177.1 The respondents admit that Millar has instituted action against them as alleged, but deny that any fees were retained illegally.

177.2 It is correct that Millar has yet again acted for some former RBP clients and has instituted applications alleging that the clients in question were charged

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common law contingency fees. None of these clients were charged in terms of a common law contingency fee agreement, but contracted and were charged in terms of the Contingency Fees Act. Nel was charged a non-contingent fee and he was paid and accounted to more than five years ago.

Ad paragraph 112

178

178.1 The respondents are aware of the *Carte Blanche* programme that aired on 22 March 2015. Given that Beamish was employed by Carte Blanche in December 2014. It soon became clear to us he specifically employed to further his attacks on us, and as we anticipated the programme was biased. The respondents have no knowledge of the remaining allegations in this paragraph.

178.2 Given the affidavits by RBP clients, Martha Kock and Clint Coleman, in which they depose about how Beamish and Millar sought to tout them, the respondents have doubts as to whether de Swardt, Hunter, Wilkinson or Nel approached Millar consequent to the *Carte Blanche* attack. In fact, Millar who surprisingly came to represent one of the respondents' experts, Dr Geoffrey Read, with regard to alleged outstanding fees, wrote directly to all the respondents' clients who were assessed by Dr Read, wherein Millar requested that they furnish him with a copy of the respondents' statement of account. In such correspondence, Millar even took it upon himself in an obvious attempt to tout our clients, to refer to the De Pontes judgment. Mr Hunter and De Swardt both forwarded Darren a copy of such letters which they received in early 2014.

178.3 Full details of how the so called *Carte Blanche* insert came to be broadcast after Beamish became employed by owners of that program in December 2014 will be dealt with in relation to paragraphs 211 onwards. Suffice to say that *everyone* involved in what could only be described as a tailor made attack, and designed to advance Discovery's interests, were in one way or another beholden to Discovery.

Ad paragraphs 113 AND 114

179

179.1 The respondents admit the figures referred to in paragraph 113 and that proceedings are pending in the High Court with regard to these matters.

179.2 Mr de Swardt was charged in accordance with an agreement in terms of the Contingency Fees Act. Letters of gratitude by him and his mother at the outcome of the case, and by implication RBP's fee are attached as annexure "RB20a & RB20b" and in which Mrs de Swardt states "Just a thank you for the excellent service Ryan received from you and your company. He is thrilled at the amount that he received from the Road Accident Fund. Without your help he would never have managed to receive the settlement he did. This has changed his whole life and given him the opportunity to move on into the future. Once again thank you. We will recommend your company to all in the future where we can." In fact the De Swardts referred new clients to RBP as recently as the beginning of this year. RBP have prepared an attorney and client bill of costs in terms of its Contingency Fee Agreement Act that justifies the fees charged. VAT does not form part of the fees but accrues to the fiscus.

179.3 Mr Wilkinson was charged in accordance with an agreement he signed in terms of the Contingency Fees Act. VAT is required by law and does not form part of the fees. RBP have prepared an attorney and client based bill of costs that confirms the fees charged.

179.4 Mr Hunter was charged in terms of the Contingency Fees Act and a bill of costs prepared by the respondents justifies the fees. VAT does not form part of the fees and accrues to the fiscus.

179.5 Mr Nel was charged on the basis of a non-contingent time charge agreement and was fully accounted to more than five years ago.

Ad paragraph 114

180 The application has already been heard and judgment has been reserved.

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Ad paragraphs 115 TO 117

181 These allegations are admitted, save that both van Niekerk and Millar by virtue of Millar being in possession of RBP's director Mr. Stephen Bezuidenhout's file in the Alves matter, would be fully aware that this matter was handled exclusively by Bezuidenhout. The fact that Millar and van Niekerk stated that the matter was handled by "the Bobroffs" serves to yet again expose the specific vendetta against Ronald Bobroff and Darren Bobroff, who had nothing to do with the matter.

Ad paragraphs 118

182 The respondents do not dispute the allegations. At the time that the claim was settled the respondents *bona fide* believed that the common-law contingency fee agreement, on which their charges were based, was valid.

Ad paragraph 119

183 RBP charged Mr. Wong a percentage fee VAT as is required by law in accordance with its Law Society compliant common law contingency fee agreement.

Ad paragraph 120

184 The allegation herein is not understood and accordingly the respondents are not in a position to respond thereto.

Ad paragraph 121

185 The respondents admit the allegations but query how Mr. Wong came to instruct Millar.

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Ad paragraph 122

186

186.1 The respondents admit the allegations but deny any overreaching in respect of Mr. Wong. Specifically the respondents state that at the time that Mr. Wong's claim was settled and he was charged a common law contingency fee (similarly in respect of all the RBP clients referred to herein who were charged such a fee), the respondents *bona fide* believed that the common law contingency fee agreement on which the charges were based were valid.

186.2The Law Society in dismissing Wong's colmplaint in 2011 acted entirely properly, given that RBP's 25% common law percentage fee was entirely consistent with the Law Society's long standing ruling permitting and encouraging such fee agreements.

Ad paragraphs 123 TO 126

187 Inasmuch as these paragraphs seek to castigate the Law Society as being inept in taking inappropriate disciplinary steps against Darren and I, I refer this Honourable Court to paragraphs 44 and 45 of Mr Gule's affidavit deposed to on 23 November 2015 on behalf of the Law Society in which two important points emerge. First, any disgruntled former client of the respondents are entitled to take legal proceedings against RBP and, secondly, in the discretion of the Law Society this is not a case in which Darren and I should be suspended pending the finalisation of disciplinary hearings.

Ad paragraphs 127 TO 151

188

188.1 I deny that the respondents have been in contempt of the Law Society's authority. We deny that we have been in contempt of this Court. Darren affirms in his affidavit, attached hereto, that he has not acted in contempt of the authority of the Law Society or the Court. Both of us respect the authority of the Law Society as well as the Court.

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188.2 It would be wrong, I submit, for the respondents to debate the findings of the Committee referred to in paragraph 139 or the investigations of the Law Society in this Affidavit.

188.3 The Law Society has already indicated that it intends to charge members of RBP. In the appropriate forum, both Darren and I, as well as other members of RBP who may be charged, will have an opportunity to test the case presented against us and to put forward our own justification for our conduct. I submit that this is not the forum to do so.

Ad paragraph 152

189 The conclusion drawn by Van Niekerk in paragraph 152 is unfortunate. I refer this Honourable Court to the contents of paragraph 48 of the affidavit of Mr Gule on behalf of the Law Society which demonstrates that the Law Society has acted vigorously in pursuing the complaints against us.

The Graham litigation

Ad paragraphs 153 TO 182

190.1 I reiterate on behalf of Darren and I that we did not intend to undermine any Court order. We complied promptly in respect of what we understood and were advised in consultation with Counsel what Justice Mothle's order required us to do. We have resolved to and, in practical terms, we have performed as would be required from officers of the Court, notwithstanding that the Law Society declaratory application has not yet been heard, as to the meaning of Justice Mothle's order. We took the advice of Murphy J and fully cooperated in giving unlimited and unhindered access to the inspectorate of the Law Society to conduct an examination of our books of account and this has already occurred.

192 It is in this context that we respectfully dispute each and every allegation made in these paragraphs inconsistent with our version. RBP in accordance with Law Society rulings genuinely believed, as thousands of other attorneys did, that it was entitled to rely on common law contingency fee agreements until the highest court of the land found otherwise.

193 In paragraph 182 of Mr Gule's affidavit, it is apparent that a new Disciplinary Committee will be appointed (it may already have been appointed by the time that this matter is heard) to investigate the Graham complaint against RBP and the respondents. I submit in context it would not be inappropriate to say to this Honourable Court that it is not fair to call upon us to answer interrogatories presented by van Niekerk, acting as a conduit for Discovery, in relation to charges we are likely to face.

194 Accordingly, we dispute the allegations made by Graham/van Niekerk to the extent that same are inconsistent with the common cause facts.

Ad paragraph 183

195 Whilst I note the contention made by van Niekerk, I submit that the Law Society is not accountable to Graham or Discovery. It is asked to conduct its business and responsibilities even-handedly and is ultimately accountable to its members in the greater interests of the profession.

Alleged Defamatory attacks by the "Bobroffs – RBP's Response"

Ad paragraph 184 TO 210

196 Darren and I are of the firm belief that Discovery is on a mission to destroy us. Katz expressly made this threat to RBP Director Stephen Bezuidenhout on 30 June 2014 stating, "Don't waste your time with appeals. We are going to destroy you all", and Bezuidenhout has deposed to this in an affidavit filed in Court in September 2014 and attached as "**RB21**". Katz made a similar threat to Darren Bobroff and his family on the 16th June 2015 and reports have been received of him making the same threat as to Discovery's fixed intention to destroy the respondents to other persons, no matter what it costs or what it takes. The events of the past 5 years, including this application give complete credence to Katz's threat on behalf of his employers.

197 To this extent Discovery has financial power and influence. It has garnished a battery of professionals in different fields of activity to launch a vicious and unprecedented campaign against us with the object of seeing us destroyed. It

is in this context that we have justifiably become aggrieved and our emotional well-being has been affected by the never ending stream of lies and defamation emanating from Discovery and its proxies all aimed at the fulfilment of Katz's threats. There have been numerous articles in the public domain, almost exclusively by Beamish who has published more than 30 attacks on us, in Moneyweb online, Moneyweb in the Citizen, and Noseweek. a list of Beamish's attacks is attached as Annexure **"RB22a"**

198 Further as will be noted in Annexure **"RB22b"** attached, Discovery Attorney Mr Anthony Millar who works with van Niekerk, and unsurprisingly represents every single former RBP client where our common law fees have been challenged, has published no fewer than 40 scandalous attacks on us in the social media including;

- "It is clear that all Ronald Bobroff has done for the legal profession is to bring it into disrepute under the guise of a benevolent benefactor
- Ronald Bobroff is to South African law, what Bernie Madoff was to the United States Securities Exchange Commission.
- Ronald Bobroff is so crooked , that he cant spit straight.

199 Our family lives have been affected. Darren's wife and children have been traumatised by the unrelenting media attacks published almost exclusively by Beamish, as also due to Beamish and Miller placing a photograph of Darren , his wife and children on the internet together with scurrilous comments. Both my wife and I, our two daughters and their families have felt the relentless pressure of the onslaught by Discovery and its proxies for almost 5 years. Beamish has distributed a scurrilous email to the parents of the other children in Darren's children's class, which is attached as RB23 .Further on the 3rd January 2016 a shocking tweet under the handle "*consumerfumer*", which is understood to be Millar, Katz or Beamish was published on twitter , and which clearly makes reference to Darren's five year old Son Eli and his Mother, and Darren as "the ambulance chasing lawyer" A copy of which appears below.

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consumerfumer @consumerfumer Jan 3
Teacher: Little Eli said his dad is a blood sucking vampire Mom: He's really an ambulance chasing lawyer but u cant tell that to a 5 y.old
0 retweets0 likes

200 Millar and Katz are invited to depose to affidavits denying that they are the user of the handle "consumerfumer", and if so to disclose the identity of such user of whom they would be would be aware, given that they would then be followers of such person.

200 Beamish using his non du plume deweycheathamandhowe@gmail.com , sent an email to my neighbours on the 31st March 2015 attacking Darren and thereby seeking to embarrass me. Beamish, again using his front "Dewey Cheatham and Howe", sent an email to RBP staff members in the form of a "poem" attacking me, Darren and Mr O'Sullivan. I suspect that Beamish emailed this scurrilous and childish document to all members of the Law Society, many of whom telephoned me to advise receiving same, and of members of SAAPIL, using a database stolen by Cora van der Merwe from respondent's server and which she emailed to Beamish. I attach this as Annexure RB24. .Some of the phrases in the "Poem" include:

"Congratulations RBP, Today is your day, to be struck off the roll, so be off and away- Now Darren Bobroff your Son and Heir, with the mouth and brain of a potty chair ... ""

"In the manner of a blood money sucking vampire bat you feasted on client's misery while your coffers grew fat"

201 Discovery Health in respect of which van Niekerk has perjured himself, by stating on oath ," are not involved directly or indirectly in the Graham matter", formed the subject matter of yet another email from Beamish to respondents staff, and I understand members of the Law Society and SAAPIL. He again used the front Deweycheathamandhowe with the subject line FW: Discovery targets ambulance chasing Bobroff's alleged RAF abuses .The body of the

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email referred to a media release by journalist who was a guest of Discovery at one of its lavish media conferences specially arranged to counter the facts disclosed in my "Shocking Discovery Document". I am reliably informed that it was primarily journalists known to be well disposed towards Discovery – it cleverly sponsors certain aspirant journalists in the health care field, who in turn inevitably know where their bread is buttered - who were invited to that conference.

202 The email by Mr. Alec Hogg, a friend of Beamish and Moneyweb editor Ryk van Niekerk, stated "Discovery took the usual step of calling a media conference today to launch a scathing attack on the large "ambulance chasing" legal firm run by Ronald Bobroff. In this interview at Biznews today, Discovery Health's CEO Dr Jonathan Broomberg explains why he is coming out against Bobroff with all guns blazing – and explains that millions of South Africans with Discovery Medical policies don't need ambulance chasers as they are automatically covered for accident expenses. – "AH".

202 I am the exclusive author of the "Shocking Discovery" document GVN44 and I maintain that everything stated therein is truthful, is substantiated by affidavits and other material attached to the document, and that the content of same is in the public interest.

203 The whatsapps alleged to have been sent out by Darren under the handle *@truereport* fabrications which I believe were concocted either by Discovery's large IT department, or more probably by Beamish who has and continues to distribute attacks on us under fictitious non du plumes, including the phonetic Dewey, Cheatham, and Howe, Newsinfo SA and various other fronts. Significantly neither van Niekerk nor Discovery have sought any relief against me or Darren in the Courts, as is their prerogative, and shortage of funds or legal resources would certainly not have been the reason for not doing so.

204 I have taken a decision not to burden this Honourable Court with the enormous amounts of literature in newspapers, magazines and social media almost exclusively by Beamish, which I genuinely believe has been brought about at the instance of or encouragement of Discovery. However an indexed lever arch file containing the dozens of articles by Beamish, Media

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releases, letters by Discovery and social media attacks by Katz and Millar, is available if so required by the Court.

205 As set out in the affidavit of Mr Gule on behalf of the Law Society, the allegations concerning defamation will be dealt with during the Law .Society disciplinary hearing (paragraph 59.1 of his affidavit).

206 The Grahams (Discovery/van Niekerk)could have approached this Court for interdictory relief, and it is wrong, I submit, that this Honourable Court now has to be burdened with matters that must be dealt with by the Law Society. In the Law Society hearing we will have the opportunity to prove that Discovery is behind the paper and social media campaign against us and we will have an opportunity to demonstrate that our response was brought about by the relentless, unlawful, and malicious conduct of Discovery and its lackeys.

207 For the sake of completeness, I display below a series of tweets between Discovery's Katz, Beamish and Millar which demonstrates the manner in which my opponents have conspired, in order to wrongfully seek to disgrace me. The tweets speak for themselves, and regrettably, objectively demonstrate the depths to which an important organisation,namely Discovery has stooped, in order to endeavour to stifle valid criticism of its conduct.

208 These tweets clearly confirm the theft and receipt thereof by Beamish on behalf of Millar and Discovery, of the respondents confidential Practice and client material, which was stolen by former RBP former bookkeeper , multiple convicted fraudster – Ms Bernadine van Wyk, who as stated in paragraph 159.2 above, was recruited for Discovery by Millar, as also material stolen by former RBP employee Ms Cora van der Merwe who forwarded same to Beamish and Millar, and as referred to paragraph 211 above confessed having done so to forensic investigator Mr. Paul O'Sullivan.

209 A selection of tweets and retweets below, between Discovery's lackey Beamish, Discovery Panel Attorney Millar, and Discovery's Katz clearly reflect the collusion between the aforesaid in the common purpose of pursuing Discovery's vendetta against the respondents

Jeff Katz @Jeffkatz10 15 Aug 2015
@zunnelle so the gift has given another gift,! understand.
3:08 AM - 15 Aug 2015 · Details
0 retweets2 likes
2

1. Anthony Millar retweeted

Tony Beamish @TonyBeamish Dec 25

@zunnelle - Santa Claus gave me super sized external hard drive full of zipped files - fun stuff. It was personalised with my initials: 1TB

Anthony Millar retweeted

Tony Beamish @TonyBeamish Dec 23

@zunnelle - KGB Olga gave me a used 1TB external HD for Xmas. Superstition dictates that I have to wait til Christmas morning to inspect it.

11:45 AM - 23 Dec 2014 · Details

Tony Beamish
@TonyBeamish

Investigative journalist's dilemma: if I have an entire firm's computer server zipped on a 1TB HD, do I publish all at once or in tiny bits?

10:51 p.m. Tue, Oct 21

Anthony Millar@zunnelle

@TonyBeamish Time to unzip your present - wonder if the LSNP can ignore all the evidence despite the malevolent influence brought to bear

210. I have already made reference to Discovery's Katz specifically making the threat on behalf of his employer " Don't waste your time with appeals. We are going to destroy you all"; to the respondents director Mr Stephen Bezuidenhout as referred to earlier herein. Katz, as has been the case in every single hearing of Millar's attacks against the respondents common law fee agreements, was present in Court at the time.

211. Katz's arrogance in continuing to threaten respondents and in particular Darren Bobroff, again became apparent when on the 16 June 2015, whilst Darren and his family were lunching at a restaurant in Melrose Arch Johannesburg, Katz also present at the same restaurant, walked up to the table at which Darren, his two little boys and wife were seated and made threats and statements. These included the following:

- "You are going to jail"
- "You have no idea of how many of your clients we have"
- "We (Discovery) will never stop. We have unlimited money".
- "You have never won anything against us and Millar and by now you should know why".
- "We will see to it, no matter what it takes, that the Grahams will never have to face Hellens at the Law Society:.
- "We will see to it that Anthony Millar will be your next Law Society President"
- "You shouldn't waste your time lodging any more complaints against Millar. You must have realised by now, these will go nowhere as has been the case with all complaints you have lodged".
- "Why do you think every complaint against you guys by us and Millar is acted on quickly and you are always before Committees?"

- "We know exactly what happens and when it happens at Council meetings, and in the Disciplinary Department, and you would be very worried if I told you what our friends are doing for us at the Law Society."

211. Needless to say Darren's two little boys were extremely traumatised by Katz's threat to their father "you are going to jail". In particular his youngest son, who is five years old, now won't leave Darren's side, insists on sleeping with him, and weeps when Darren leaves for work. This little boy is the "Eli" referred to in paragraph 199 above.

212 Despite a complaint having being lodged with the Law Society against Katz on the 30th July 2015, no action whatsoever has been taken against Katz and it was only on the 20th October 2015 – almost 3 months later, that the Law Society's disciplinary official Jaco Fourie responded, stating that the complaint was referred to Katz for comment and that Katz was to respond by Friday the 20th November 2015. As of the date hereof, almost six months after the complaint was lodged, no denial by Katz of the allegations against him, or indeed any response by him, has been received by us from legal Official Fourie despite numerous follow up letters to him requesting a response as to whether Katz had replied to Darren's complaints.

213 It is important that I deal with van Niekerk's misleading allegations in paragraphs 186 – 188. Firstly, van Niekerk conveniently omits to disclose to the Court that Darren's undertaking to the Committee was given;

213.1 as a compromise so as to avoid the need for the committee to have to spend days hearing available evidence as to the truth of what was stated by Darren on his private Facebook page limited to friends and family concerning Katz and Millar's conduct. I.e. Mr. Bellon and Mr. de Almeida were available to testify as to how Mr. Katz had allegedly attemped to bribe them, and 20 of

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Millar's clients were available to testify as to how they had been touted by Millar's tout Jabu to Millar's office.

213.2 That the undertaking was given on the express understanding that same would be strictly confidential, and that no party would be permitted to publish same. The Committee was requested by Counsel representing Darren to make such an order, and as the verbatim of the proceedings will show, such an order was made.

213.3 The respondents were given social media exchanges between Beamish, Millar and Katz after the hearing, and wherein contemptuous and flagrant disregard for the committee's confidentiality ruling was evident. Millar emailed Katz and Beamish advising that he had requested a copy of the verbatim, which Millar would send to Katz, who would in turn send it to Beamish for publication as soon as he had it. As arranged, Beamish did indeed publish in detail, Darren's confidential undertaking, and billboards defaming Darren were as arranged by Beamish displayed throughout South Africa. Copies of the email and whatsapps between Beamish and Cora van der Merwe (Corne van Niekerk) confirming the above are attached as annexure RB23.

DISCOVERY'S INVOLVEMENT IN MILLAR'S BECOMING PRESIDENT OF THE LAW SOCIETY

On the 28th January 2015, Millar addressed a letter to the Law Society to which was attached a requisition requesting a special meeting of the Law Society and which bore the names and signatures of 110 persons. The purpose of the meeting was to force an election of the so called statutory component of the Council, notwithstanding that consequent upon the Legal Practice Act, the Law Society Council will cease to exist within the next year or so.

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214. As will be noted from annexure RB25 attached hereto, the requisition was signed exclusively by Millar, his partner Norman Berger, their two professional assistants Messrs Shipalana and Serobe, Discovery's Katz and his assistant Elton Krawitz, both non-practising attorneys, and the remaining 104 names and signatures were exclusively those of Directors and professional staff of Discovery's attorneys ENS Africa. Not a single attorney unconnected with Discovery or its attorneys signed the requisition.

215 The meeting requisitioned by Millar, Discovery and ENS was held, the resolutions proposed by Millar, Discovery and ENS were carried, candidates nominated for the 7 Johannesburg and Pretoria statutory seats included Millar, two other Discovery panel attorneys and two ENS directors. The election was held for the statutory component and the Discovery panel attorneys, Millar and an ENS director were elected as President. Thereafter Millar was elected as President, as confidently predicted by Katz some 5 months previously, when he threatened Darren on the 16th June 2015.,

.216 Unsurprisingly and given the close relationship and collusion between Discovery's Katz , Beamish and Millar, in their common purpose of promoting Discoveries vendetta against respondents, Katz and Beamish published the tweets attached hereto as **Annexures RB26a and RB26b,** lavishing praise upon Millar in respect of "his election" as President

217 One understands their elation given that Millar, who has never to the best of my knowledge ever served on any committee of the organised profession from local Attorneys association upwards, or ever been involved in any way in the affairs of the professions, is now suddenly, and as previously stated as confidently predicted by Discovery's Katz more than five months ago, now obviously in a powerful position to assist his client, Discovery in the furtherance of its vendetta.

The *Carte Blanche* insert

Ad paragraphs 211 TO 218

218. I dispute the version set out by Van Niekerk as to the interview in the *Carte Blanche* insert. I have ascertained that all but one person, involved in the

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program, including the editor , and the executive director were the recipients of financial benefits from Discovery, and in the case of the producer she was a finalist in a Discovery competition which rewards the winner with an amount not far short of R100 000.00. I have little doubt that her prospects in this year's competition have been materially enhanced, given the effusive praise lavished on her by Discovery, Millar and Katz..

219. There is no doubt in my mind that the program and the attack on me and RBP, was brought about by Beamish who had become employed by Carte Blanche in December 2014. Within a month of his employment by Carte Blanche, I received correspondence from the managing editor making specific reference to Beamish's attacks on the respondents, and requesting an interview with me. I have also ascertained that the Discovery group is a major advertising supporter of Carte Blanche in particular and DSTV in general. I attach a tweet by Katz wishing Carte Blanche's Mazerakis "Happy Anniversary" of the show "Annexure attached hereto RB27.

220. The questions posed demonstrated a mind-set that the purpose of the interview was to wrongfully embarrass and to portray me and RBP as the only attorneys in South Africa who had rendered services in personal injury claims, based on a common law contingency fee agreement, and that because of that we were scoundrels This not withstanding that I had furnished the editor and producer with a detailed chronology including, supporting documents, detailing how the Law Society came to permit and promote common law contingency fee agreements.

221 This included the Law Societies rulings, the Law Societies letter to then DJP van der Merwe dated 11 October 2011, the paper by the Honourable Supreme Court of Appeal Judge Malcolm Wallis, and the quote from the Constitutional Court Judgement in the SAAPIL leave to appeal application.

222 I also attached the common law percentage contingency fee agreements of other attorneys including that of the attorney who has for some years and currently still advertises on Carte Blanche, and whose mandate routinely contracts for a fee of 33.3%. I do not criticize this colleague in any way.

223 In the interview I sought to defend the position that RBP and the Law Society had adopted, prior to the finding by the Constitutional Court that common law

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contingency fee agreements were invalid. The debate was robust and the interviewers questioning and attitude confrontational and acrimonious. Despite this and as will be apparent from the broadcast video I remained courteous and professional.

224 I deny that I brought the profession into disrepute, submit that the contrary was the case, and deny the version of van Niekerk in its entirety. From my point of view I was entitled to dispute preconceived and malicious attacks made on me, RBP and by implication the entire factual position in respect of the genesis of common law contingency fee agreements, and my own opinion on the matter.

The Law Society's statutory duties

Ad paragraphs 219 TO 237

225 I wish to make the following points. First, RBP is committed to fully cooperate with the Law Society in the charges the latter it has indicated it will bring against RBP and its members. Secondly, the Law Society has a duty to carry out its statutory functions which have been recorded in paragraph 219 of Van Niekerk's affidavit.

226 RBP accepts that it is the object of the Law Society to uphold the integrity of practitioners and in so doing to take disciplinary steps against alleged wrongdoers. It is for this reason that RBP is fully cooperating with the Law Society and will not only participate but abide by the directives of the Law Society.

227 There is no need for this counter-application as RBP will abide by the directives and rulings of the Law Society.

Answer to the Law Society's application

Ad paragraph 238 TO 254

228 The contents of these paragraphs are a repetition of matters already fully dealt with above. RBP prays that the contents of its version set out above be incorporated herein.

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229 Much of the matters raised in these paragraphs are of academic value inasmuch as RBP has tendered an inspection of all its records to the Law Society without any limitation or conditions and this has already taken place. Hence, in the fullness of time, and if there are any disciplinary charges against RBP and its members, this will have to be dealt with on the merits. I accordingly deny each and every allegation in these paragraphs inconsistent with my version. I accept and admit the common cause facts, in particular quotations from judgments by our Courts.

Ad paragraphs 255 – 308

230 RBP does not oppose the Law Society's application. In fact this is necessary to regularise the processes of the Law Society in order to give effect to the orders of Justice Mothle.

231 Accordingly, there is no need for RBP to respond to the Law Society's application.

232 The respondents remain of the view that there is no valid reason why the inspectors' further report should be furnished to any persons other than the actual parties before the Court and their legal representative. In particular, there is no valid reason why the applicants Attorneys should be at liberty to share the contents of the further report with Discovery and those persons who are allied to Discovery. Appropriate safeguards should be put in place to protect the confidentiality of the respondent's private financial affairs.

233 The respondents aver that, if the contents of the further report are shared with any persons other than the actual parties, who are before the Court and their legal advisors, this will be an invasion of the respondents constitutional right to privacy, and open the way for Discovery to abuse the information in the further report for its own personal ends, namely to bring about financial ruin for the respondents.

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The relief sought by the applicants (Discovery)

Ad paragraphs 309 TO 324

234 I dispute each and every allegation made in these paragraphs. If any confidential information is disclosed in the report of the inspectors without the respondents being afforded the opportunity to reply to any possible adverse comments made in the report, the respondents would be denied their right to fair administrative justice. The respondents therefore submit that once the inspectors have carried out their investigation, if they find any alleged irregularities, the respondents should be afforded the opportunity to comment on any *prima facie* adverse findings which the inspectors may make.

235 Mr Stephen Bezuidenhout is due to retire from RBP soon due to ill health, and is in the process of handing over his Practice to other professionals employed by RBP.

236 Mr Anthony Berlowitz is neither a Director or employee of RBP.

237 To suspend any of the respondents directors or members at this stage would be disastrous for RBP. It will bring about the immediate destruction, of a decades long established and respected law firm, that has dozens of longstanding employees, some of whom have been with the practice for decades and hundreds of clients. Their interests would be impeded without affording them an opportunity to be heard. It would be disastrous for the respondents because we would be effectively found guilty without having had an opportunity of presenting our case on the merits.

238 If any confidential information is disclosed in the report of the inspectors without the respondents being afforded the opportunity to reply to any possible adverse comments made in the report, the respondents would be denied their right to fair administrative justice. The respondents therefore submit that once the inspectors have carried out their investigation, if they find any irregularities, the respondents should be afforded the opportunity to comment on any *prima facie* adverse findings which the inspectors may make.

239 I accordingly pray that the counter-application be dismissed with attorney and own client costs, including the costs of two Counsel.

Deponent

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at on this 15th day of JANUARY 2016 and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

COMMISSIONER OF OATHS

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