





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

J.G.

303



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

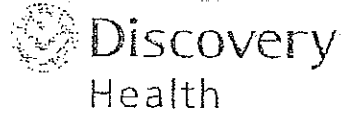
155 West Street, London, EC 4A 3DF  
 (01) 529 2885 (switchboard), Fax (01) 529 2958 www.discovery.co.uk

Directors: M. I. Hukovic (Chairperson), A. Goss (Circus CEO), Dr J. Brozberg (CEO), Dr E. A. Brink, P. Cooper, S. E. Lystein (USA), R. Farber, H. D. Kaiser, H. S. Koopman, Dr T. V. Mazon, H. P. Mayers, V. Mufson, G. L. Owen (UK), A. Pollard, J. M. Robertson (CIO), S. E. Seibitz, T. Steibert, B. Swartzberg, Dr P. M. Thiele, S. V. Zilva (Executive Secretary), M. J. Bitha

Discovery Health (Pty) Ltd registration number 169701345007  
 An authorised financial services provider

J.G.

304



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

Yours faithfully,

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

155 West Street, Sandton, PO Box 786722, Jonathan 2146, Tel: 011 529 5143 Fax: 011 529 2958 [www.discovery.co.za](http://www.discovery.co.za)  
 Directors: M I Halikowski (Chairperson), A Gore\* (Group CEO), Dr J Bronsberg (CEO), Dr E A Brink, P Cooper, S R Epstein (USA), R Farise\*, H D Lefner\*, M S Koopowitz\*, Dr T V Maphia, H F Meyer\*, V Mufamadi, A L Owen (UK), A Pollinet\*, J M Robertson\* (CIO), S E Seboisa, T Stebbert, B Swartzberg\*, Dr P M Tlhabi, S V Zimba (Executive Secretary of J Brains)

Discovery Health (Pty) Ltd registration number 1967/013420/07  
 An Authorised Financial Services Provider

J.G.

305



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

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

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

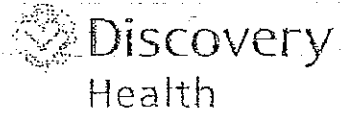
15.6.2. advise and keep the Scheme advised of the progress in relation to such claim for compensation; on admission of such claim by the RAF, advise the Scheme of the terms of such admission, including any terms relating to any undertaking by the RAF to make payments of the costs of any future medical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

155 West Street, Sandton, PO Box 786722, Sandton 2146; Tel 0860 99 88 77 or 083 129 8877 (toll-free) (0) 11-579 2658 (Sandton), Fax (0) 11-539 2955, www.discovery.co.za

Directors: M I Hlatkywa (Chairperson), A Gore\* (Group CEO), Dr J Brodsky (CEO), Dr E A Frank, P Cooper, J S Epstein (RSA), R Fisher, H E Kallner, M S Komposor\*, Dr T V Madala, N P Mogens\*, V Abdumadi, A J Cohen (UK), A Poffard\*, I M Ankersen\* (CID), S E Schmitz, T Steiner, E Swarczberg\*, Dr P M Thabo, S V Tladi\* (Executive Secretary); M J Botha

Discovery Health (Pty) Ltd registration number 1997/0174580/07  
An Authorised Financial Services Provider

J.G.



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

1. EXCLUSIONS

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

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

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

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

J.G.

307  
IRBP 211

## STATEMENT

CHRIS HAJIBEY

state as follows:

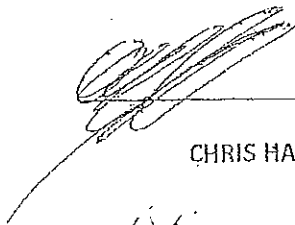

1. I am an adult male businessman.
2. I was involved in a motor vehicle accident on the 26<sup>th</sup> December 2004 and instructed Ronald Bobroff & Partners Inc. to do my Road Accident Fund claim. I was represented by Stephen Bezuidenhout of that firm.
3. My claim was finalized 5<sup>th</sup> March 2009 and I was in fact present at Court and fully aware of the basis of the settlement.
4. I am a member of Discovery Medical Aid under membership number 033730810
5. I was never advised by the broker who introduced me to Discovery Health that I would only be entitled to sickness medical benefits and that if I required medical care as a result of the wrongful act of another including a road accident injury, that I would not be entitled to any medical care arising from the accident unless I signed an undertaking to make a claim against the Road Accident Fund and to reimburse Discovery Health the medical costs recovered which they Discovery had paid.
6. I never at any time during my membership with Discovery received a detailed summary of the Rules of the Scheme, or any advance written notification of any amended amendment to the Rules or any communications from the Board of Trustees of Discovery informing me as to exclusions or conditions applicable to road accident generated medical costs.
7. In and during February 2011, I received a letter from Discovery Health demanding payment of money from me in respect of medical costs which they alleged to have paid in respect of my motor vehicle accident treatment.
8. A few days later, I received a phone call from one Jeff Katz of Discovery.
  - 8.1 He said that I owed Discovery money in respect of medical costs they had paid arising from my accident;
  - 8.2 He required a copy of a breakdown from me of all monies recovered from the Road Accident Fund as he wanted to see what had been claimed and recovered. I told him there was no breakdown as it was a lump sum settlement;

JG  
[Signature]

308

- 8.3 I advised Mr Katz that my file was kept off site at our offices and i would have to order same for delivery, I would advise him once the file had been received and set up a date and time to meet.
- 8.4 He asked me who was my attorney that had handled my claim and I replied that it was RBP Inc.;
- 8.5 He said that especially with that firm I would probably find that they had not disclosed to me that they had recovered any medical costs from the Road Accident Fund or paid those medical costs to me;
- 8.6 Whilst I knew exactly what had been claimed and what had been recovered and that I had been fully accounted to by Ronald Bobroff& Partners Inc., I decided not to engage Katz in further discussion on this point;
- 8.7 From the way in which he spoke about Ronald Bobroff& Partners Inc. in was clear to me that he was out to get at the practice and his exact words were "that especially RBP Inc. have not been paying the medical costs recovered to their clients' and that he / Discovery would be seeking to recover these costs from Ronald Bobroff& Partners Inc.";
- 8.8 I told him that I was fully aware of exactly what had been recovered and that I had been fully and satisfactorily accounted to and was extremely pleased with the outcome of my claim and the highly professional service I had received from RBP Inc.
- 8.9 Despite making my full satisfaction clear to him with the services of RBP Inc., he persisted in insisting that I should let him have every document I had received from my attorneys and meet with them. I was contacted by his personal assistant during February to confirm a further meeting time and was asked whether I had received the documents from the off-site storage.
- 8.10 He said that if I brought the account from RBP Inc., he could virtually guarantee me that he would show me that they had not paid me the medical costs recovered;
- 8.11 I told him that whatever had been recovered was reflected on my account together with full details of all disbursements incurred as also the fee charged and with which I was entirely happy.

Dated at Johannesburg this the 27th day of May 2011

  
CHRIS HAIJBEY 



"RBP3"

darren

From: Dean Almeida [almeida.dean@yahoo.co.uk]

Sent: 09 March 2011 08:23 PM

To: darren@bobroff.co.za

Subject: Re:

Good day, Mr Bobroff;

Below, as requested, please find; in point form, the details of several verbal engagements with Discovery Law Department, specifically; Mr Katz.

- Initially I was contacted by Bonny, the first call involved a description of the situation as she saw it and a request to sit and talk about it – she was polite and sincere.
- The meeting was with Jeff and we sat and spoke about the fact that there was an outstanding amount from the accident I had in April 2006. I wasn't aware there was an outstanding amount and asked why I would have to pay Discovery back when I paid premiums to cover the expenses they paid for. He simply answered, 'its in your contract'; I said, 'Well no one told me'. And he brushed off the comment and said that what he is sitting with is an outstanding amount of ..... and I am responsible for it. He added that sometimes the attorneys don't advise their clients of this legal requirement, and I answered; 'But Bobroff paid an amount.' He said, 'That was only an apportionment.' (right word?) So then he went off on this note of how I approached Bobroff. I said you came to me a few weeks after my accident and wanted to sort things out for me from a legal perspective with regards to the RAF. He said, 'They call it ambulance chasing.' Like apportionment, I didn't know what this meant either, his explanation; 'Lawyers wait in hospital reception areas or get others to wait and recruit clients like that, and that this practise is common, but illegal. He then asked how I contacted Bobroff, and I answered, 'A lot was happening at that time, I cannot remember if my fiancé maybe called them or the hospital was affiliated with them, I was on too many pain-killers to know my left from my right.' He asked; 'Did they ask me to sign anything.' I said, 'Yes, a few documents, my fiancé was present since I wasn't altogether present.' He asked, 'Did they explain anything to you.' I said, 'Well I assumed my fiancé read everything, again, half my body was either in wire, screws or metal plates; nothing was too clear to me, I hadn't left the bed in weeks.' He said, 'So you have no knowledge of contacting them and they didn't go through the documents with you?' I said, 'I honestly cannot say for sure who contacted who, I am glad someone did though, and I am sure they explained them to me, or my fiancé, same thing. He asks, 'Can you see where I am going here, what kind of practise goes about business like this?' I said, 'Well I am not familiar with the legal system, but I have known Bobroff, Darren specifically, for years now and they have always been most courteous and helpful in every legal regard and have never asked me for a cent. In terms of that, I'd say a fairly great practise.

- After that meeting he wanted me to forward him the awards document and the break down of who got what in the deal. I asked if this effects my Discovery claims in future and he said 'It won't effect it too much, just help us help you.' I didn't know what that meant until the next phone call from him.
- This is when I contacted you to ask for the paperwork since I had moved so many times I didn't even know where my ID book was. You said you had passed everything onto them, which is when I phoned them to tell them this; Jeff asked, 'Well why wont they give the documents to you?' I said, 'I am sure its in my best interest, but then, why you asking me for them if he has already sent it all?' He said, 'No some of the documents are incomplete.' That conversation went nowhere from there, he wasn't happy though.
- Then they asked for another meeting because they wanted me to see their attorneys to take Bobroff to court because they said you mislead me. I forgot the attorneys names, they are probably in the emails somewhere. But they were down the road from Discovery - flowers?
- This meeting didn't happen initially because I couldn't make it. Then I phoned you to say that they want to meet again and you said to refer them to you from now on. I did this when next Bonny emailed me and she phoned me almost 5min after I sent the mail. She tried to convince me to come to the meeting saying that it is in my best, when I repeated that you had specifically said to refer them to you; Jeff got onto the phone. He started getting aggressive saying that the money is owed and Bobroff and myself are responsible for this outstanding amount. 'It would be easier if I just cooperated with his department to straighten things out.'
- I agreed to the above meeting, on the simple note to get him off my back, I must be clear there, both himself and Bonny must have phoned me several times in a week. I agreed to make them stop. I couldn't make this appointment either, I lost my job that day and needed some time to adjust and think; and I was asked to help install an antenna.
- Bonny phoned me twice that morning, the second time Jeff came onto the phone again and asked, 'What do you think your doing?'; 'Do you want to make this easy for yourself or hard?' I asked what he meant by that. He said, 'If you sit with us and our attorneys, you wont be responsible for the amount because you were mislead.' I said, 'To be honest, it seems like Discovery are the ones misleading me and harassing me.' He asked, 'Fine, make the decision right now, do you want us to help you, or you on your own?' I said, 'You can't give me an ultimatum like that, its not fair.' He said, 'Well your either helping us or your not.' I said, 'I'm sorry, I can't help.' He put the phone down. Agressive individual, but he was also probably under pressure.
- My brother-in-law took me on one of his antenna installation jobs(this is who I am working for now) the phone call went on during the installation, must have been at least 25min of phone conversation.

—Darren, I don't know if that helps. But it was quite along time ago, I can maybe remember more

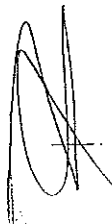
311

from the emails, but essentially, that is how everything went about.

I am more than happy to assist in any way I can, they took money from us, and many others because they sneakily slipped a clause into their contracts which basically said that they don't cover you for anything, either way; you will have to pay them back. And then they didn't explain it to anyone?

I look forward to identifying them as having a 'bad-practise' law department.

Thank you again,

JG 

11 RBP 4  
312

23 February 2011

Dear Darren

Here is an account of the motor vehicle accident that I was involved in on the 26<sup>th</sup> January 2006, and the subsequent "reaction"/attitude received by Discovery Health in this regard.

Facts of the accident

On the 26<sup>th</sup> January 2006, I was involved in motor vehicle accident where I was a pedestrian and was "knocked over" by a vehicle in Glenhazel, outside Ohr Somayach. I was initially taken to the Linksfield Clinic and subsequently to the Milpark Hospital. At the Milpark hospital, I was admitted to ICU where I was stabilised. During my stay in hospital, brain scans were performed to ascertain the extent of the brain injury, I aspirated and developed pneumonia and was in an induced coma for 5 weeks.

Discovery initial reaction/attitude

The conduct of Discovery Health with respect to the above described accident was no less than despicable. To be brief and to the point, the following measures were taken by Discovery:

- Within the first week, (maybe as soon as 72 hours) after the accident, Charmaine le Grange (I may be mistaken as it was so long ago) from Discovery contacted my wife,
- She insisted on the following actions to be taken by my wife:
  - o Jody appoint Discovery's attorneys to represent us in the case against the Road Accident Fund (I am sure that this is unethical behaviour), more significantly in the prevailing situation,
  - o Jody sign an undertaking to reimburse Discovery Health for all medical costs incurred by Discovery Health upon finalisation of the claim against the RAF. Failure to do so, would result in the following actions:
    - All medical accounts paid from date of accident would be reversed,
    - All authorisation/cover by the medical aid would cease with immediate effect, and
    - I would have been transferred to a state facility.

It needs to be understood that my wife was caught in the following situation:

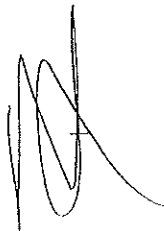
- Her husband had just been in a car accident,
- It was unsure as to whether or not he was going to live through it,
- Serious brain injuries were sustained, and should he "make" it, what the extent of the injuries were going to be and what his functioning would be,
- He was in an induced coma, and
- Lastly, in the event of death, who was going to provide/support her family

As a result of the above, Jody believed that she have no choice other than to sign the undertaking.

Subsequent communication

Subsequent to the above mentioned correspondence, Discovery Health contacted me with a further undertaking to reimburse them as mentioned above. In the event that I refused to sign this undertaking, Discovery would reverse payments in respect of any payments made in of this accident. This amount was in the region of R850 000. Should Discovery have reversed these payments, and in light of my diminished ability to earn an income, I may have been sequestered and lost my home in order to settle these accounts.

JG



Conclusion


I find that the above behaviour by a company that, according to all published literature, prides itself on customer care and the extensive and most comprehensive medical cover available in South Africa. The fact that Discovery could bring such unbearable pressure and duress upon a woman under these circumstances is beyond and is absolutely appalling, especially in light of the fact that I have been paying premiums every month for just this occasion.

One further question: Should this "condition" not be mentioned by the brokers when they sell you the product? I believe that this is a very material item omission!!

I look forward to your response

Yours faithfully

  
Mark Bellon

J.G. 

IRBP 5" 3/4

STATEMENT

I, undersigned,

MARK BELLON

do hereby state as follows:

1. I am a member of Discovery Health Medical ("Discovery").
2. After I was involved in a motor vehicle accident, and whilst I was in intensive care my wife was contacted by persons representing Discovery who demanded that she sign an undertaking compelling me to make a claim against the Road Accident Fund and reimburse Discovery whatever medical costs it had or would pay relating to my accident.
3. The demand was accompanied by a threat to immediately terminate medical care to me and to reverse the cost of any treatment which I had already received because of the accident.
4. I did pursue a personal injury claim and instructed Attorneys Ronald Bobroff & Partners Inc. The claim was successfully finalized.
5. I instructed my Attorneys not to furnish any undertaking to reimburse Discovery or its collection agents as I did not believe they were entitled to this given that I had never at any stage prior to joining, on joining or at any time thereafter ever been informed that my benefits excluded non-illness generated medical care or that same were subject to exclusions and conditions.
6. I was recently approached by Alan Jacobson, an acquaintance of mine, employed at Discovery, who informed me that Jeff Katz ("Katz"), wished to meet with me to discuss my unhappiness with Discovery. I thereafter received subsequent communications from Katz via Jacobson as set out below.
7.
  - 7.1 Katz stated that Ronald Bobroff & Partners were secretly retaining money in respect of medical costs without disclosing this to clients and that they would do the same to me.

J.G. [Signature]

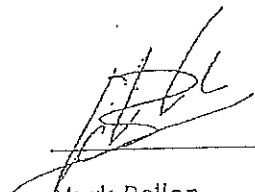
- 7.2 That Katz was prepared to have Discovery waive any claim against me with respect to the amount of approximately R500 000.00 they had, and were demanding from me in respect of medical expenses.
- 7.3 The impression I got was that Katz was very emotionally involved and wanted to "buy" me off so that I be used by him to neutralize Ronald Bobroff in his endeavours to protect his clients, as also the clients of other Attorneys, who had been and were being harassed for payment of monies by Discovery/Katz under circumstances the same as applied to me.
- 7.4 It was further my understanding that Katz was very concerned that it would become public knowledge and that the Registrar of Medical Schemes Council would also become aware that Discovery had not and was not complying with the Medical Schemes Act.
- 7.5 I understand that the Act requires medical schemes to see to it that prospective members and members are fully informed as to exclusions or conditions applicable to benefits and of course, that members initially receive a detailed summary of the rules of the scheme and the rules themselves. Clearly this never happened prior to and during my membership of the scheme.

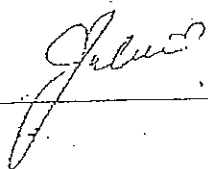
- 8. I confirm that I am entirely satisfied with the service I have received from RBP Inc, the outcome of my case and the fees and disbursements charged to me.
- 9. I believe that Discovery/Katz's conduct in threatening and seeking to intimidate Discovery members who have suffered the misfortune of sustaining injury in a road accident, especially at a time when such members may be fighting for their lives, is immoral and wholly unethical, if not illegal.
- 10. I have been advised that a substantial portion of the medical costs which Discovery/Katz have been demanding from me fall under Prescribed Minimum Benefit Care and which may not be refused or made conditional in terms of Regulation 8 (10) of the Medical Schemes Act.
- 11. My wife, who was the recipient of the threats I refer to in paragraph 7 above will sign at the foot hereof to confirm the aforesaid.

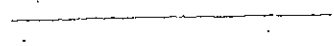
SIGNED AT JOHANNESBURG THIS 30<sup>TH</sup> DAY OF JUNE 2011

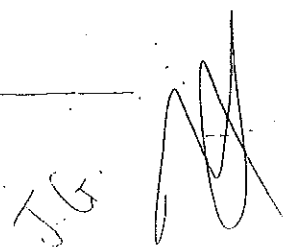
AS WITNESSES:

1. 

  
Mark Bellon

2. 

  
Jody Bellon





**BRUGMANS INCORPORATED**  
(Reg. No. 1978/000192/21)  
ATTORNEYS

suite 2120  
carlton centre  
johannesburg  
2001  
p.o. box 618  
johannesburg  
2000  
DX 93 johannesburg

"RBP6"  
316

your ref. G van Niekerk/AP/0309785 & J Haydock/0309785

our ref. Mr Fagri/mg/R.496

☎ (+2711) 354-9000  
☎ direct (+2711) 354-9002(ext102)  
direct fax: 086 508 0224  
e-mail: [teejayf@brugmans.co.za](mailto:teejayf@brugmans.co.za)

10<sup>th</sup> June 2011

**ATTENTION: GEORGE VAN NIEKERK**  
Edward Nathan Sonnenbergs  
E-mail: [gvanniekerk@ens.co.za](mailto:gvanniekerk@ens.co.za)

**ATTENTION: JAMES HAYDOCK**  
Edward Nathan Sonnenbergs  
E-mail: [jhaydock@ens.co.za](mailto:jhaydock@ens.co.za)

Dear Sirs,

DISCOVERY HEALTH ("DISCOVERY") / SUNDRY MEMBERS

We refer to previous correspondence as well as to our various telephonic discussions.

We note that your clients have yet to revert regarding the convening of a round-table conference and this notwithstanding the fact that a video conference had been scheduled with your clients for the 8<sup>th</sup> Instant.

As matters presently stand, it is evident that your clients remain, for whatever reason, reluctant to meet. Our clients are now more than convinced that, from the commencement, your clients have never had any real intention of agreeing to a meeting and that they have, in fact, been negotiating in bad faith. In support hereof, we are instructed to record the following, namely:

Directors: Trevor John Fagri B.Com.LLB; Jennifer Margaret Norton B.Proc; Andreas Charalambous B.A. LLB;  
Lize-Marié Oosthuizen B.Com. LLB.  
Associate: Goretti Silva B.A. LLB.

Assisted by: Faezah Khan B.A. LLB; Johannes Jacobus Murray B.Proc; Gldeon Petrus Smith B.Proc; René Herbst LLB;  
Thomas Bell B.Proc; Audrey Trollope B.L.C. LLB; Kelly von Holdt B.Com. LLB; Aidan Mylchreest B.A. LLB  
Johannes Nicolaas Myburgh LLB.

J.G.



DISCOVERY HEALTH ("DISCOVERY") / SUNDRY MEMBERS

10<sup>th</sup> June 2011

1. from day one, our clients have demonstrated complete transparency, in an open and honest endeavour to address and resolve all possible areas of dispute for the benefit and in the best interests not only of themselves and Discovery, but, more importantly, for the benefit and interests of their clients and Discovery's members;
2. at the writer's very first meeting with James Haydock, it was made clear that resolution could only be obtained if the principal role players demonstrated a willingness to conduct themselves in a "level-headed" manner. Clearly, as recent developments will confirm, this note of caution was, and is still not being, heeded by your clients;
3. at the round-table conference held at the chambers of Adv Ian Zidel SC ("Zidel") on 11<sup>th</sup> April 2011, it was made clear that Ronald Bobroff & Partners Inc. ("RBP") were reluctant to hand over their original files unless an overall settlement could be attained. Having said this and in appreciation of the fact that your clients would not be in a position to consider an overall settlement of all of the identified disputes without first having had access to the pertinent RBP files, it was agreed to afford your clients the opportunity of working through the files at the offices of RBP;
4. at this juncture, it is necessary to point out that in the course of the round-table conference, your clients were invited to pursue their endeavours to prepare and submit a draft agreement with a view to facilitating the resolution of the original dispute pertaining to the interpretation of the Discovery rules and its statutory obligations. We raise the discussions pertaining to the preparation of the draft agreement primarily for purposes of emphasizing that the primary objective of the round-table conference was to explore and lay down the foundations for a possible overall settlement of all of the identified disputes;
5. it is also necessary to record that RBP consented to the inspection of its files at its offices purely in an endeavour to facilitate and expedite settlement negotiations. In a further endeavour to accommodate your clients, there was no hesitation on the part of RBP to accede to your request for a meeting with their Costs Consultant, Jerry Joubert ("Joubert"). Mr van Niekerk will recall that within an hour of his having called for a meeting with Joubert, Joubert arrived at the RBP offices. Joubert was duly questioned by


JS



10<sup>th</sup> June 2011

Mr van Niekerk and neither the RBP Directors nor the writer deemed it necessary to be present whilst Mr Joubert was being questioned, which again demonstrates the openness and transparency displayed by RBP and its representatives;

6. subsequent to the inspection of the files at the RBP offices and because of your clients' concern that file notes were being prepared and inserted *ex post facto*, we were requested to have the files delivered to our offices. RBP agreed to this, once again, without any hesitation whatsoever, and in a further endeavour to maintain transparency and to satisfy your client's requirements;
7. the files were then inspected, at our offices, on two different occasions. On both occasions, full and free access was given to the relevant files in the *bona fide* belief that this would be of assistance to your clients in addressing and evaluating issues which would be raised, discussed and clarified in the course of the previously discussed round-table conference;
8. if regard must now be had to the Graham complaint the LSNP and, more in particular, to certain of the attachments thereto, our clients have little choice but to conclude that your clients have been negotiating in bad faith and that the sole purpose of the file inspection was to identify, extract and collate what your clients perceive to be incriminating evidence against the one or other of the Directors of RBP;
9. it is evident, from the Graham attachments, that certain of the papers appearing in the Graham file were considered to be of such a nature as to give substance to the complaint. Photocopies of these papers were obtained and in our e-mail of the 8<sup>th</sup> instant, we requested you to indicate how these photocopies came to be in your client's possession, bearing in mind that, at none of the inspections, were either the RBP Directors or the writer requested to grant permission for copies of the requisite papers to be made;
10. the writer has now established that despite his having been in office at the time of the inspection of the relevant files in our boardroom, non-professional staff members were called upon to make copies of certain papers which we can only assume were extracted from the Graham file. It must be reiterated that such copies were secured without the consent and/or permission of the writer;

J.G. 


3/9

DISCOVERY HEALTH ("DISCOVERY") / SUNDRY MEMBERS

10<sup>th</sup> June 2011

11. In the circumstances and to enable the Directors of RBP to give further consideration to their position, having regard, once again, to the manner in which the copies were secured, we call upon your clients to furnish us with a full set of all of the documents photocopied from the Graham file. Similarly, if copies were made from any of the other files, these must also be submitted to our offices without any delay. In view of the urgency, and provided that the copies are not voluminous, we require you to scan and e-mail the same directly to the writer at [teejayf@brugmans.co.za](mailto:teejayf@brugmans.co.za). Should this not be possible, we suggest that you utilize a courier service to expedite the delivery;
12. our instructions are also to query your purported representation of the dependants of the late Elvis Msibi: as indicated previously, RBP has been unable to find any record of having ever represented the Msibi dependants and despite previous requests for the RBP reference, such reference has yet to be furnished by your clients. In the light of the concerns which RBP has in relation to your clients' conduct, we have been instructed to call for the following, namely:
  - 12.1 an explanation as to how you came to receive instructions from the Msibi dependants;
  - 12.2 a certified copy of the requisite Special Power of Attorney;
  - 12.3 written confirmation that, as is the case of the other erstwhile RBP clients, Discovery will be responsible for the payment of your legal and related costs; and
  - 12.4 if the late Msibi was, indeed, a member of Discovery, details of any payments made by Discovery in the post-accident treatment of the late Msibi and, obviously, prior to his death.

Having regard to the prevailing circumstances, our clients now have little choice but to agree with Discovery's Jeff Katz that no purpose would be served in convening the round-table conference called for previously. Having said this and without being aware of the reasons for Mr Katz's ongoing reluctance and/or refusal to meet, it must be pointed out that the decision on the part of our clients to withdraw from the proposed negotiations, is motivated solely by the fact that they are satisfied that it was never your clients' intention to enter into meaningful negotiations and that your clients' main objective has always been (and remains) the attainment of what it perceives to be incriminating and/or damaging

J.G.  


DISCOVERY HEALTH ("DISCOVERY") / SUNDRY MEMBERS

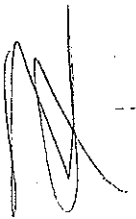
10<sup>th</sup> June 2011

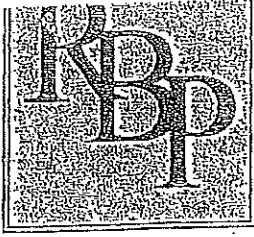
evidence against RBP. We are instructed, in this regard, to refer you to the RBP response to Mr van Niekerk's e-mail of 21<sup>st</sup> April 2011.

Turning then to your ongoing request to be furnished with copies of the relevant RBP files, our clients will only be able to attend to this request once they are in receipt of the full extent of the copies secured when the files were inspected at our offices. It is also worthwhile repeating that in responding to your requests, RBP will only make available copies of papers which its erstwhile clients will be legally entitled to receive.

In closing and for the sake of completeness, we wish to record that nothing herein contained ought to be seen as a waiver of any of the rights of either RBP and/or its Directors and as part of the reservation of such rights, we specifically reserve the right to expand upon the content of this communication if and when this becomes necessary.

Yours faithfully  
**BRUGMANS INCORPORATED**  
per:

J.G.  




HRBP 711  
321

**RONALD BOBROFF  
& PARTNERS INC.**  
**ATTORNEYS**  
**SPECIALISTS IN MAJOR PERSONAL INJURY CLAIMS**  
Est. 1974

P.O. Box 1170  
Parklands  
2121  
Tel: (011) 880-6781 (10 Lines)  
E-mail address: info@bobroff.co.za

37 Ashford Road  
Rosebank  
2196  
Fax: (011) 880-6784  
Doxco 153, Jhb

OUR REF:- D BOBROFF/9946

06 September 2006

MR M J GRAHAM  
BY HAND

Dear Sir

PERSONAL INJURY CLAIM

We refer to the consultation held with you on 06 September 2006.

We intend in this letter to briefly summarise matters dealt with during the consultation so as to enable you to have this letter for reference purposes:

1. Fees

Our fees are payable on a no win - no fee basis. This means that if your claim is unsuccessful you will not be liable for our fees. This however is conditional on the following:

- 1.1 That you make full disclosure to us of all the true facts concerning how your accident occurred as well as your medical history, work history and any other relevant matter which could affect your claim. Basically we expect the client to be completely honest with us, our medico-legal advisors and the Court concerning all issues.
- 1.2 Further that you follow our advice and recommendations as to the conduct of your claim, settlement or any other matter, which we consider to be relevant.
- 1.3 Our fees which are payable out of the money recovered in your claim subject to 1.1 and 1.2 above are calculated at the hourly rate contained in the fees mandate signed by you and relate to any attendances of whatever nature made with regard to your

DIRECTORS: RONALD BOBROFF: B.A. LLB (WITWATERSRAND); STEPHEN BEZUIDENHOUT: B PROC (WITWATERSRAND);  
PROFESSIONALLY ASSISTED BY:  
CATHERINA E PIENAAR: B.A (UOVS) B.CUR (PRET) LLB (UNISA); PHILIPPA JANE FARRAJ: B.A LLB (UN);  
LAWRENCE DEALE: B JURIS (PRET); YOGES RAMA: B.SOCIAL SCIENCE(NATAL), LLB(UDW);  
DARREN BOBROFF: B.A LLB (WITWATERSRAND) & LAWYER, NSW, AUSTRALIA;  
\*JACOB SEROBE: LLB (RAU); \*DINICA STRYDOM: LLB (RAU);  
\*JACQUELINE BOUCHER: LLB (PRET); \*BARBARA BOWES; \*NATASHA JACKSON: B.A(WITWATERSRAND)  
INTERNAL ACCOUNTANTS: JEAN SMITH; NATASCHA DA COSTA; THERESA CANEA  
\* CANDIDATE ATTORNEYS  
ESTABLISHED 1974

J.B.

case and include, but are not limited to consultations, telephone attendances, perusals, research, travelling, discussion, opinions etc.

1.4 If you have entered into a contingency fee agreement with us in terms of which either the Contingency Fees Act applies or where we have contracted with you to receive a percentage of the damages recovered in your claim our fees will in our discretion be calculated in accordance with this sub-paragraph or paragraph 1.3 above.

2. Disbursements

All disbursements incurred in your claim will be paid out of money recovered in your claim subject to 1.1 and 1.2 above. During the course of your claim you may be required to make a minimum payment towards such disbursement costs.

3. Medical History

You are required to make full disclosure to us and to any medico-legal experts engaged by either us or the third party insurer's of any pre-existing medical problems prior to this accident. This would include any previous accidents or claims instituted for compensation arising out of physical disability. Failure to make such disclosure, will seriously prejudice your case as this information is invariably ascertained by Third party insurer's or their investigators and is then used against you so as to seriously cast doubt on your truthfulness. If the information is disclosed initially it can be dealt with as it is not unusual for clients prior to the current injury to have had pains in some way similar to those arising from the accident. It is frequently the case for example that, headaches which occur after an accident are more severe or frequent than the ordinary tension or stress headache which people experience without being involved in an accident.

4. Employment and Financial Records

A major portion of your claim could relate to present or future loss of income. To substantiate this, it is necessary for us to have full details of your employment record. This will include tax returns or IRP 5 forms. It must be understood that if you have not declared your income officially and have not paid tax thereon, it may well be risky to make a claim for loss of income as the insurance company or their attorneys will require copies of your income tax documentation and might seek to pressurise you into accepting a lesser settlement in your action with a threat of reporting you to the Receiver of Revenue, or having a representative of the Receiver of Revenue attend the hearing of your case.

It is therefore important that you make full disclosure to us of your financial affairs.

You have been given a list on which you are to complete the names and addresses of all employers for a period of five years prior to your accident to date. This should be returned to us and a copy will be retained by you for updating as applicable.

5. Medical Treatment, Records and Accounts

The third party insurers will form an impression of the severity of your condition according to the amount of treatment you receive. There is a myth in this type of case that a doctor can cure anything.

It is therefore essential that if you have pain in any way related to your accident you should receive ongoing conservative treatment such as physiotherapy, analgesic and anti-

J.S. [Signature]

inflammatory medication or the like. In many cases conservative treatment may not result in any improvement but you are nevertheless required to be seen asking for relief if you indeed have pain. Ongoing complaints of pain without corroborating records of treatment will lead to these complaints being treated with scepticism by the court and your claim will suffer accordingly.

It is important for you to keep a list of all medical and hospital expenses incurred for treatment relating to your accident together with accounts or copies thereof. We will also keep a copy of this which will be updated each time we meet. This list will make it easier to prove and recover these expenses.

You have been given a pre-printed form on which you are required to complete the names and addresses of all doctors and medical personnel consulted by you for a period of five years prior to the accident and until your claim is finalised. The third party insurer will require this information.

Your medical aid may refuse to pay for treatment arising out of the accident. You may refer them to us as they will usually agree to pay provided they receive a letter from us in which you undertake to repay them if you recover these expenses in your claim.

6. Employment

Evidence by employers or co-workers can often make or break the case. It is therefore essential that if you have pain or experience difficulty in your work your supervisor should be aware of this. Behaving stoically and keeping details of your suffering private will only result in your employers and/or co-workers giving statements to the insurance company's investigators to the effect that you appear in perfect health and manage your work easily. This will of course destroy your chances of proving any future loss of income on account of pain adversely affecting your work performance. Obviously you are not expected to jeopardise your job by continual complaints but it is important that genuine difficulties be brought to the attention of your employer and co-workers.

7. General Commercial Activities

You may well be required in the normal course of your life to complete various forms which may include applications for work, personnel agency forms, medical aid or insurance applications and so on. Full and honest disclosure of any medical problems or physical complaints arising out of the injury must be made in these forms. Invariably the third party insurers will obtain copies of these forms.

If you have not disclosed these problems in an application for medical aid cover this will be used against you to show either that you are a liar and therefore cannot be believed about anything or that you were not experiencing any problem from the injuries sustained in the accident and for that reason did not include it in the form.

8. Procedures Followed and Duration of Case

There are innumerable procedures and attendances which have to be done by this practice and in which you may not be directly involved. You should therefore not be concerned that your action is not being attended to if you do not hear from us for any period of time. Most of the work in this type of case is done without the presence of the client and we will not request you to call into the office to consult with us unless we believe it is necessary.

T.S. [Handwritten signature]

324

The anticipated duration of this type of claim varies between 18 months to three years and you should clearly understand this. It is invariably in your interests that the claim should not be settled too early as it is only after the expiration of a reasonable period of time that your medical condition will become sufficiently stabilised so as to enable our medico-legal experts to make a final prognosis as to your future health.

Obviously we welcome early realistic settlement proposals from the third party insurers but our experience is that this rarely occurs.

9. Trial Costs

In the event of a settlement offer being made by the third party insurers which in our opinion is reasonable and should you decline to accept such offer, we then reserve the right to request you to immediately pay to us, to be held in Trust, a deposit in respect of Counsel's trial fees, medico-legal and other witnesses consultation and trial fee charges as well as a deposit in respect of our anticipated fees to be incurred on trial. This may also apply if your claim is weak on the merits (i.e. evidence is that you were substantially at fault) and no offer has been forthcoming.

10 Your Financial Affairs

Please note that you should under no circumstances make plans based on expectations of receiving money in your case. You should not give undertakings to any person, place orders for any goods or in any way assume that a particular amount of money or any amount of money is going to be forthcoming. This will also apply even when your claim has been settled. The reason for the above is that the outcome of litigation is always uncertain and even where successful it is never possible to state with certainty exactly when the money will be forthcoming. We are aware of a number of instances where clients after their cases were settled immediately got themselves involved in placing orders for cars or furniture etc. Difficulties then arose with the frequently unavoidable delay in finalisation of the recovery of the settlement money as well as that portion of the costs for which the defendant is usually liable.

Please bear this in mind throughout your case.

11 Finalisation and Payment

When your matter is settled or concluded by judgment of the Court, payment by the third party insurer is made in two stages. They will firstly make payment of what is known as the capital or damages. This money is immediately debited in respect of all disbursements incurred in your case as well as for an interim or part fee for ourselves.

In the event of a settlement offer being made, you will be advised of the net amount which will be available to you after payment of fees and disbursements and you will be required to sign an authorization and agreement for settlement of your matter on this basis.

Yours faithfully

RONALD BOBROFF & PARTNERS INC.

RECEIVED BY: J.A. GRAMM

ON THIS THE 6<sup>th</sup> DAY OF SEPTEMBER 2008

JG





10 August 2011

Mr Graham and Discovery Health

Dear Mr Bobroff,

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

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

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

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

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

1 | Page

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

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

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

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

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

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

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

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

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

Jerry Joubert

Postal Address	Physical Address	Cellular phone: 073 033 9070 / 083 620 3597
Legal Billing Systems	Unit 2	Telephone: +27 11 312 2588
P.O. Box 101089	MIDRAND AXIS	Fax1: 086 639 6249
Moreletaplaza	Old Pretoria Rd, Halfway House	Fax2: 086 660 9379
South Africa	Midrand	E-mail: <a href="mailto:jerry@legalbilling.co.za">jerry@legalbilling.co.za</a>
0167	South Africa	<u>You are also welcome to visit us</u>



Legal Billing Systems  
Your Costs Are Our Business

"RBP9"

327

## CERTIFICATE OF TIME SPENT

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

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

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

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

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

J. Joubert

DISCLAIMER NOTICE: This certificate and all attachments thereto contain confidential information intended for a specific addressee and purpose. Any copying, publication or disclosure of this information, its attachments, or part hereof, in any form whatsoever, without the author's express written consent, is prohibited. This certificate does not constitute a guarantee or proof of the facts mentioned herein, but merely an estimation of the potential value of the fees in the matter based on the work done, as well as the supporting mandates and fees agreements in place.

Postal Address  
Legal Billing Systems  
Postnet Suite 25  
Private Bag X4  
Wierda Park  
South Africa  
0149

Physical Address  
UNIT 2  
MIDRAND AXIS  
Old Pretoria Rd, Halfway  
House  
Gauteng  
South Africa

Cellular phone: 083 629 3597  
Telephone : +27 11 312 2588  
Fax 1: +086 633 7433  
Fax 2: +086 633 9464  
E-mail: [jemy@legalbilling.co.za](mailto:jemy@legalbilling.co.za)  
You are also welcome to visit us at:  
<https://www.legalbilling.co.za>

J.G.  
J.S.

"RBP 10"  
328

**CURRICULUM VITAE**  
**J M JOUBERT**  
**MAY 2011**

NAME : JEREMIA MARTINUS JOUBERT (JERRY)  
DATE OF BIRTH : 1970-10-31  
HIGHEST LEVEL OF EDUCATION : LLB  
MEMBER OF PROFESSIONAL BODIES : IAASA  
EMPLOYER : LEGALBILLING SYSTEMS (PTY)LTD  
CAPACITY : STARTING MEMBER AND DIRECTOR

**Professional background**

The experience of Jerry Joubert within the legal costs field from 1990 to date with experience as follows:

- **Employment at the Department of Justice in the office of the Registrar of the High Court**, for 4,5 years from the period of August 1990 to January 1995 at the Transvaal Provincial Division amongst others as **Taxingmaster of The High Court**,
- **Legal Costs Officer with the RAF** for a period of 1,5 years from February 1995 to July 1996,
- **Senior Legal Costs officer with the RAF** for 1 year from August 1996 to July 1997,
- **Manager of the Legal costs department** of the Pretoria, Johannesburg and East London branches of the RAF for 7,5 years from August 1997 to February 2005
- **Admitted advocate of the High Court of South Africa**
- **Costs Consultant** drawing both Party and Party as well as Attorney and own client Bills of costs for period since March 2005 onwards.

*With this profile Mr. Joubert has been exposed to all levels of the costs component. There is extensive experience as a Taxingmaster being the adjudicator of all costs disputes in the court, extensive experience from the defendant party side having been with the RAF for 10 years, and now having drawn Bills of costs for both plaintiff and defendant attorneys on the Party and Party as well as Attorney and client scales.*

JG

