

**COMPLAINT OF PERJURY AGAINST GEORGE VAN NIEKERK OF ENS
CAPE TOWN**

BACKGROUND

1. In the years up to November 2010, Discovery Health became extremely aggressive in demanding reimbursement from members of all accident generated medical costs which required the member litigate against the wrongdoer at his or her own risk and cost without any indemnification for any adverse costs orders.
2. Ronald Bobroff on behalf of numerous clients sought to clarify the position from Discovery and on 17 November 2010 addressed a letter marked **annexure A** to Discovery's debt collecting attorneys Munro Flowers and Vermaak. These attorneys are one of the many panel attorneys who receive a weekly list of Discovery members who sustain injuries arising out of a motor vehicle accident. Members are touted and forced to sign Discovery's illegal undertaking to reimburse all recovered medical costs back to Discovery. The illegal undertaking marked **annexure B** seeks to make the payment of prescribed minimum benefits (emergency medical care) conditional upon signature of the undertaking. The panel attorneys receive a secret percentage of the funds reimbursed which is based on a common law contingency fee agreement.
3. Within days of sending the above letter Discovery illegally obtained details of all Ronald Bobroff & Partners (RBP) past three year client settlements from the Road Accident Fund and commenced matching those who were Discovery members. Discovery's in house debt collector Jeffrey Katz whose salary package is dependant upon recoveries, commenced addressing threatening letters marked **annexure C1 & C2** to RBP clients demanding reimbursement of the medical costs paid by Discovery despite most of these members

never having been requested to reimburse the scheme since the date of their accident which in some cases stretched back eight years.

4. Katz thereafter telephoned the member in an attempt to manipulate them against RBP by advising them that RBP had misappropriated their funds. He even went as far as attempting to bribe a former Discovery auditor Mark Bellon whose matter was settled by RBP and we attach an affidavit deposed to by Mark and his former wife Jody Bellon as annexure D1 & D2. Katz also harassed and threatened another RBP client Dean Almeida as noted in annexure D3.
5. Unfortunately for Katz he was only able to blackmail one RBP former client Mathew Graham who suffered a brain injury and who was extremely satisfied with the outcome of his matter and the fees charged to him. Almost a year after Graham's matter resolved Katz manipulated him and his bookkeeper wife to sit with Discovery's attorneys in order to fabricate a complaint against RBP to the Law Society of the Northern Provinces.
6. In March 2011 five separate letters were received from attorney George Van Niekerk of ENS, Cape Town despite the fact that all the clients were situated in Johannesburg and would never be in a position to afford ENS inflated fees. We attach one of the letters in respect of the Graham matter and a further letter marked annexure E1 & E2.
7. It appeared that none of the clients had any issue with RBP but were manipulated into believing they may have been misled. Two of the five clients, a couple Mr Razak and Mrs Vawda had no issue with RBP's handling of the matter and or the fees charged evidenced in the attached statement from Mrs Vawda marked annexure F.
8. One of the other clients Mr Ashford in fact never authorized Van Niekerk to obtain the file however his father had signed authority to do so yet Van Niekerk must have realized that RBP had in fact undercharged the client and never took the matter further. The same applied in the matter of Agar.

9. During this time RBP became aware that Discovery Health were in fact not complying with the Medical Schemes Act in particular Sections 29(1)L, 30(2), 54(7)(d). S66(1) makes non-compliance a criminal offence punishable by imprisonment and or a fine.
10. RBP and the South African Association of Personal Injury Lawyers commenced enquiring from Discovery members whether they had ever received a detailed summary of the rules as is peremptory in terms of Section 30(2) of the Act and not a single member questioned had ever been informed of Discovery's secret Rule 15.6 and Annexure C or received a summary of the rules.
11. Discovery concerned about the consequences being both criminal and financial that may flow from their deliberate defrauding of members had to take vigorous and urgent action to discredit and destroy RBP for exposing this fraud.
12. During February and April 2011 the Law Society of the Northern Provinces sent out a notice marked annexures G1 & G2 cautioning all attorneys with regards to reimbursing a medical scheme but made no mention of Discovery. Not surprising it was only Discovery's Katz who vigorously objected and threatened legal action as noted in a letter marked annexure H. Katz admitted that Discovery's recoveries had plummeted to twenty five percent of what it was. This no doubt impacted Katz pocket.
13. In July 2011 Van Niekerk submitted his concocted complaint in the name of Discovery's pawns, the Grahams to the Law Society of the Northern Provinces. Van Niekerk sought to control the Law Society Disciplinary Department and believed that his complaint would be determined on the papers without the Grahams having to give oral evidence and face cross examination, by ensuring the committee appointed to determine the matter being furnished with the complaint in advance of the hearing so as to poison their minds.
14. Unfortunately things did not pan out for Van Niekerk as a court determined that a committee would not be entitled to be furnished

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with the complaint prior to the hearing, that Van Niekerk and his team of lawyers and counsel would have no right of appearance at the hearing and that the Grahams would in fact have to give oral evidence and face cross examination.

15. To this end Van Niekerk devised another plan. He launched a vexatious application against our practice and the Law Society on the basis that both ourselves and the Law Society were not efficiently dealing with this complaint. The real motive for such application was to prevent the Grahams having to give oral evidence and face cross examination and for a court to determine the matter on the papers.
16. Van Niekerk has made reference to the fact that Discovery Health is funding the Grahams complaint costs and the Grahams themselves under oath have confirmed same.
17. Van Niekerk for some reason or another in various interlocutory applications states under oath that Discovery Health are not involved directly or indirectly in this matter.

**VAN NIEKERK'S DISGRACEFUL MISCONDUCT REFERRED TO BY
LAW SOCIETY OF NORTHERN PROVINCES PRESIDENT**

18. The President of the Law Society of the Northern Provinces, Mr Busani Mabunda in his replying affidavit dated 21 November 2012 made the following statements in regard to Van Niekerk's conduct:
 - 18.1 at paragraph 7.5, "I have no doubt that the application as far as the Law Society is concerned, is vexatious".
 - 18.2 At paragraph 61.3, "It is common cause the applicant's legal costs in both the complaint against the second, third and fourth respondents and in this application are funded by the Discovery Medical Scheme and that Van Niekerk has been instructed by Discovery and not by the applicants. The exact involvement of

Discovery and the reasons for its involvement have however not been properly disclosed and/or explained.

18.3 At paragraph 69.2, "The applicants owe the court why an explanation as to untruths have been submitted to the court under oath. The applicants and/or Van Niekerk should in my view be called upon to show cause why their conduct in this regard should not be considered to be perjury and an attempt to mislead the Court.

19. The President in a Supplementary Affidavit made the following further allegations against Van Niekerk:

19.1 at paragraph 10.1, "The involvement of Discovery has already been alluded to. In paragraph 47 of his affidavit Van Niekerk denies the fact that he acts on behalf of Discovery. Van Niekerk says the following under oath: I also deny that I act on behalf of Discovery Health or any of the entities in the Discovery Group of Companies.

19.2 At paragraph 10.2, "Van Niekerk's abovementioned allegation is incorrect. It is well known in the legal fraternity that Van Niekerk and his firm ENS, act for Discovery. Van Niekerk has in any event on occasion admitted the fact that he acts on behalf of Discovery".

19.3 At 10.3, "In an official statement issued by Van Niekerk, he said the following: ENS was instructed by Discovery Holdings to assist a number of members of the Discovery Health Medical Scheme, who were former clients of Ronald and Darren Bobroff of Ronald Bobroff and Partners Incorporated Attorneys".

19.4 At 10.5, "Despite the obvious involvement of Discovery, Van Niekerk attempts to explain that the applicants do not act in their own interests in bringing the application, but in the interests of the general public. I do not accept this contention, especially in view of the fact that the applicant's 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.

19.5 At 10.6, "Van Niekerk denies that Discovery has a hidden agenda in this matter. It is significant that it is Van Niekerk in his personal capacity, who denies Discovery's involvement and not Discovery itself. No confirmatory affidavit on behalf of Discovery has been filed with Van Niekerk's affidavit. The fact that Van Niekerk personally denies the extent of Discovery's involvement evidences his intimate relationship with Discovery".

19.6 At 13.1, "Van Niekerk's protestations that he merely acted zealously in the interests of the applicants are belied by the contents of the founding affidavit and Van Niekerk's letters attached thereto. They are also contradicted by the allegations contained in Van Niekerk's affidavit under reply".

19.7 At 15, ".....The Law Society reserves the right to, in view of Van Niekerk's conduct and involvement, recommend to the Honourable Court that an order de bonis propriis be granted against Van Niekerk".

20.

20.1 Van Niekerk in substituting himself for the "respondents" in opposing the applicants leave to appeal to the SCA dated 20 August 2014 states in paragraph 26, "It is unfortunate that RBP and the Bobroff's canvass in such detail the apparitional role of Discovery Health and it's "vendetta" against them instead of dealing with the substance of the Graham's allegations".

20.2 At 27, "Discovery Health is not a party to this litigation -- directly or indirectly.....".

21.

21.1 Van Niekerk again in substituting himself for the "respondents" in opposing the applicants leave to appeal to the Constitutional Court dated 22 October 2014 states, "Discovery Health is not a party to this litigation – directly or indirectly".

21.2 At 26, "Nevertheless, I reiterate that Discovery Health is not a party to these proceedings. The order of the court a quo does not afford any rights or entitlements to Discovery Health".

21.3 At 27, "The sum total of the involvement of Discovery Health in these proceedings is that it is also represented by ENS".

21.4 At 28, "Finally it is grossly misleading for RBP and the Bobroff's to rely on the Law Society's past attitudes towards Discovery Health.

**VAN NIEKERK'S & DISCOVERY HEALTH MEDIA STATEMENTS
CONTRADICT HIS AFFIDAVITS**

22. In an article attached as **annexure I**, headed "Legal potholes when claiming from RAF", dated 29 April 2012 reported in the Financial Mail of the Saturday Star the following statements were made:

22.1 "Discovery Health is paying the costs for the legal team that is working on the Grahams complaint. Discovery Health's chief executive Dr Jonathan Broomberg says the scheme is supporting the case against Bobroff & Partners because "we have an obligation to assist and protect our members, particular those that find themselves in a vulnerable position."

22.2 "Discovery Health also believes it has a duty to defend the integrity of the third party compensation system. Broomberg Says"

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

(23. In a Discovery media release attached as annexure J, it was stated "Discovery Health has supported these cases against Ronald Bobroff and Partners because we believe that we have an obligation to assist and protect our members, particularly those that find themselves in a vulnerable position. We also believe that we have a duty to defend the integrity of the broader structures of our society, in this case the Road Accident Fund".

24. In a further joint Discovery/ENS media release attached as annexure K, dated 29 October 2012 it was stated that

24.1 "ENS was instructed by Discovery Holdings to assist a number of the members of the Discovery Health Medical Scheme, who were former clients of Ronald and Darren Bobroff of Ronald Bobroff and Partners Inc attorneys. ..."

(24.2 "In all of these matters for Discovery members which we looked at...."

25. In an article headed Unsettling Discovery which was reported in the Finweek on 3 May 2012 attached as annexure L, it stated

25.1 "Why is Discovery Health Medical Scheme paying a lot of money to have the practice of well-known personal injury lawyer investigated for an alleged contingency fee irregularity?"

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

26. In a Moneyweb article attached as annexure M, dated 27 January 2014 it stated:

26.1 "The Graham's case if being funded by their medical aid, Discovery Health.

27. In a further article attached as annexure N, headed "Bobroff & Son accused of overcharging" written by Discovery's journalist Beamish and dated 28 January 2014, it stated:

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

28. In another Moneyweb article attached as annexure O, published by Discovery's Beamish and headed "Discovery – Bobroff fight turns to old clients:, dated 19 May 2014 it was stated:

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

28.2 "Discovery Health's short one page letter highlights the recent judgment of..."

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

29. On 26 October 2014 Discovery released a media statement relating to Ronald Bobroff and Partners attached as annexure P, which stated:

29.1 "Discovery Health has supported these cases against Ronald Bobroff and Partners because we believe that we have an obligation to assist and protect our members, particularly those that find themselves in a vulnerable position...."

30. In an online publication attached as annexure Q, called FA News dated 26 February 2014 the following was stated:

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

30.2 "Discovery Health CEO Dr Jonathan Broomberg says that the Constitutional Court ruling has significant ramifications for the industry. Discovery Health will endeavor to identify and contact all Discovery Health members who may be affected by this ruling. ..".

31. While Van Niekerk has repeatedly stated under oath that Discovery is not involved directly or indirectly in the case against RBP he must explain why Discovery's entire legal department headed by Jeffrey Katz is found seated in every court hearing against RBP, not only in the Graham matter but in any other matter dealt with by Discovery's proxy attorneys Norman Berger and Partners. In this regard we attach two separate photos as annexures R1 & R2, evidencing Discovery's legal department seated at court.

32. Discovery's involvement and collusion between their journalist Beamish, proxy attorney Anthony Millar and Van Niekerk is noted in a tweet sent by Beamish to his accomplices in which he requests they

retweet his article defaming RBP. This is attached as annexure "RBS".

33. The President of the Law Society of the Northern Provinces, Mr Solomon Strike Madiba deposed to an affidavit in July 2015 wherein he stated:

33.1 At paragraph 8 " 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 Bobroff's reference to Discovery and its involvement as "prolix".

33.2 At paragraph 9, "The active involvement of Discovery in these proceedings is well known by now. Although Discovery's involvement was previously denied by attorney Van Niekerk under oath, it now appears to be common cause".

33.3 At paragraph 10, " Discovery's involvement is very relevant to the proceedings, particularly to the counter application and impacts on the substance thereof".

33.4 At paragraph 11, " 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 conclusion it is abundantly clear that Van Niekerk has committed the crime of perjury having repeatedly denied the involvement of Discovery, directly and indirectly yet both Discovery and himself and repeatedly stated that Discovery are behind the attacks upon Ronald Bobroff and Partners and confirmed that his fees are funded and paid by Discovery Health. The involvement of Discovery is one of direct

involvement. Discovery via their in house debt collector Katz issues instructions, receives reports from Van Niekerk and covers Van Niekerk's large legal teams no doubt substantial costs.