

"JG2"
264

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

Est. 1974

P.O. Box 1170
Parklands
2121
Tel: (011) 880-6781 / 2 / 3
Website: www.bobroff.co.za
E-mail address: info@bobroff.co.za
For prompt response: ronaldb@bobroff.co.za

37 Ashford Road
Rosebank
2196
Fax: (011) 880-6784

Docex 153, Jhb

OUR REF: MR R BOBROFF/rs
YOUR REF: MR J FOURIE/M Smith/4036/2011/Mrs L Du Plessis

23 August, 2011

MR. J FOURIE
C/O The Law Society of the Northern Provinces
123 Paul Kruger Street
Pretoria
BY HAND

Dear Sir,

Re: COMPLAINT BY VAN NIEKERK / M & J GRAHAM

1. BACKGROUND

Mr Graham, aged 35, a self employed plumber sustained serious bodily injuries arising out of a motor vehicle accident on the 6 September 2006.

He was being conveyed in his own bakkie by his employed driver when the collision occurred. There were allegedly two other vehicles involved although it was unclear as to who had caused the accident.

DIRECTORS: MANAGING - RONALD BOBROFF B.A. LL.B (WITWATERSRAND), LAWYER - NSW, AUSTRALIA,
ISRAELI BAR ADMISSION EXAM, STEPHEN BEZUIDENHOUT: B PROC (WITWATERSRAND);
DARREN BOBROFF: B.A LLB (WITWATERSRAND), LAWYER, NSW, AUSTRALIA, SOLICITOR, ENGLAND &
WALES

PROFESSIONALLY ASSISTED BY:

VANESSA VALENTE: BA LLB (WITWATERSRAND); PHILIPPA JANE FARRAJ: B.A. LLB (UN);
JACOB SEROBE: LLB (UJ); GINA TOGNOCCHI: BA LAW LLB (UJ);
INTERNAL ACCOUNTANT: NATASCHA DA COSTA;

ESTABLISHED 1974

115

Graham had no recall of the accident and his driver died as a result of the injuries sustained in the accident. The driver of the minibus involved was also killed, although it was alleged that the minibus veered out of control due to a burst tyre. The driver of the BMW vehicle on the scene alleged that the minibus had come across the white line, collided with his vehicle and thereafter struck the vehicle behind him. It appears that this would have been the Mazda in which Graham was the passenger. The witness A Lobb, contradicts this and alleges "the reason the taxi was out of control was due to the BMW going over onto the oncoming traffic lane and side swiping the taxi. The alleged result was that the taxi's tyre burst in the collision causing the taxi to lose control and veer into the oncoming lane where he collided with the Mazda Bakkie." The problem is that Lobb's statement admits that he lost sight of the BMW prior to the impact as the BMW disappeared over a blind rise.

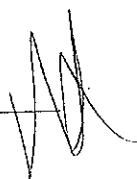
Attributing negligence to any one driver was therefore extremely problematic and there were serious concerns as to whether absolution would not result. Mrs Graham, the holder of a BA, Psychology Degree, then studying for her honours and who was also an experienced bookkeeper running her husband's large business was referred to RBP by a friend, Mrs Gail Van Niekerk.

She consulted at her request with Darren Bobroff, signed RBP's fee mandates and was given copies thereof together with RBP's detailed client first interview letter setting out the procedures to be followed and making specific reference to the percentage and time charge fee mandates.

RBP instructed 10 experts to examine and/or assess Graham, furnish reports and be available for trial, briefed senior counsel and the matter proceeded all the way over some 3 ½ years to High Court Trial. The matter only became settled after intense negotiation on the day of trial for R1 979 952.89 being almost double the amount tendered the previous day.

The settlement and the nett agreed amount to be received by Mr Graham was recorded in RBP's written client Discharge Document, a copy of which was given to Mr and Mrs Graham.

Capital and costs were recovered. The client was accounted to and paid in full on the 12 September 2010.

T.G.


266

Mr and Mrs Graham expressed their utmost satisfaction with the result obtained and made no complaint during the 10 months which passed from settlement on the 5 March 2010 until they fell into the hands of Katz, an employee of Discovery medical Aid and/or their Agents.

1.1 RBP's RESONSE TO THE GRAHAM COMPLAINT

1.1.1 Given the repetitive and unsequenced nature of the document drafted by Van Niekerk, we believe it appropriate so as to enable the reader to follow the allegations and our rebuttal thereof, in a logical sequence, not to deal with each and every paragraph thereof sequentially but rather to provide a coherent overview of the relevant facts and circumstances together with a rebuttal of specific allegations requiring same.

1.1.2 In essence this whole contrived complaint focuses on what is a nett 4% difference in the fee which would have been charged Mr. Graham in terms of our percentage mandate as compared to that charted to him in terms of our time mandate at his specific request so that he could be guaranteed a net settlement payout on the day the claim became settled.

1.1.3 If Mrs Graham's scumilous allegations as formulated by Van Niekerk are to be believed, all of these would have been done by RBP so as to recover such additional nett 4% fee. We submit that such a proposition is plainly absurd and malevolent.

1.1.4 At the outset we submit that the documentation attached hereto will make plain that this is not a routine complaint by an aggrieved client but rather the perpetuation of an on-going vendetta by Katz and his employer Discovery Medical Aid against Ronald Bobroff and RBP Inc.

1.2 The vendetta commenced in 2010 after Ronald Bobroff questioned Discovery's right to harass Plaintiff Attorneys and their clients (members of Discovery) with demands that the clients and their Attorneys sign undertakings to claim against the Road Accident Fund and to reimburse Discovery, free of any cost contribution by it, relevant amounts recovered in respect of medical expenses.

J.B. [Signature]

267

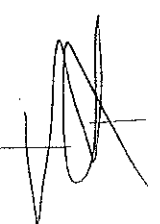
- 1.3 Within weeks of RBP's letter dated 17 November 2010 to Discovery's collection agents, (Flowers Vermaak), seeking clarity as to the basis on which Discovery based its demands, Katz unlawfully, without the consent of the client's concerned nor RBP, procured confidential information from the Road Accident Fund regarding these client's claims and used this information to write to numerous RBP clients who happened to be members of Discovery, and make demand from such clients for payment.
- 1.4 In subsequent correspondence to such clients Katz repeated such demands, dishonestly using wording designed to indicate that he/Discovery were "currently investigating practices on the part of certain firms of Attorneys" and that these investigations had indicated that "certain Personal Injury Lawyers clients did not receive" payment from their Attorneys of the amounts paid by the RAF ...", "RBP 1" when in truth, and as Discovery have subsequently admitted in correspondence (letter on behalf of Discovery), no other Law Firm was or has been targeted by Katz and Discovery. Discovery's letter speaks for itself. "Although Discovery was and remains aware only of one firm that engages and discharges clients in accordance with the modus operandi seemingly favoured by RBP, it employed plural language so as not to expose RBP. Discovery will of course adopt the same approach in respect of any other firm understood to have acted similarly."
- 1.5 It is clear that from RBP statements referred to below and has been confirmed by subsequent developments as referred to herein that Katz and Discovery had embarked on a vendetta against RBP aimed at intimidating and silencing Ronald Bobroff, and by example any other Plaintiff Attorney, from exposing what has been a clear, longstanding and flagrant disregard for vital provisions of the Medical Schemes Act by Discovery. Disclosure of this in turn would lead to Plaintiff Attorneys advising their clients, against giving in to the duress and threats commonly utilized by Discovery and its collection agents into forcing its members to sign unlawful undertakings in favour of Discovery as referred to above.
- 1.6 A statement volunteered by RBP client, Attorney Chris Hajibey, attached "RBP 2", as to Katz's efforts to recruit him as a pawn to be used by Katz/Discovery in attacking RBP, refers to Katz defaming RBP and in paragraph 8.7 thereof that "it was clear to me that he was out to get at the Practice". Further that despite Mr Hajibey making "my full satisfaction clear to him (Katz) with the services of RBP Inc. he persisted in insisting that I should let him have every document I had received from my Attorneys".

J.B. [Signature]

268

- 1.7 Another statement volunteered by RBP client Mr Dean Almeida, attached "RBP 3" also clearly exposes Katz's intentions and ongoing vendetta. After describing RBP as "ambulance chasers" and despite Almeida making clear his entire satisfaction with the service he received and the result obtained by Darren Bobroff for him, Katz persisted in harassing Almeida *inter alia* to the extent that that "they asked for another meeting because they wanted me to see their Attorneys to take Bobroff to Court because they said you misled me".
- 1.8 When Almeida grew weary at the constant telephonic harassment by Katz and his assistant, Katz adopting a carrot and stick approach took the phone from his assistant and threatened Almeida "he started getting aggressive saying that the money is owed and that Bobroff and myself are responsible for this outstanding amount – it would be easier if I just co-operated with his Department to straighten things out".
- 1.9 Yet again Katz phoned Almeida and demanded of him "what do you think you are doing, do you want to make this easy for yourself or hard". When Almeida enquired what this meant Katz replied "If you sit with us and our Attorneys you won't be responsible for this amount because you were misled". This was clearly an attempt to bribe Almeida
- 1.10 Mr Mark Bellon, is an RBP client, whose wife was harassed by Discovery and its collection agents whilst he had suffered severe injury and was fighting for his life in intensive care. They demanded that she sign an undertaking compelling her and/or her husband to make a claim against the RAF and reimburse Discovery out of the proceeds. A letter by Mr Bellon detailing the aforesaid unlawful, unsavoury and disgraceful conduct by Discovery graphically describes the torment his wife was put through by Discovery at a time of great personal stress and is attached hereto "RBP4"
- 1.11 Mr Bellon, has also made a statement attached hereto "RBP5" describing how Katz/Discovery attempted to bribe him.
- 1.12 Katz had conveyed a message to him via a Discovery employee that:
- 1.12.1 Katz wished to meet with him "to discuss my unhappiness with Discovery;
- 1.12.2 Katz stated that "RBP 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.



1.12.3 Katz "was prepared to have Discovery waive any claim against me with respect to the amount of R500,000 they had and were demanding from me in respect of medical expenses".

1.13 Mr Bellon goes on to state that "the impression I got was that Katz was very emotionally involved and wanted to "buy" me off so that I could 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."

1.14 We have no doubt whatsoever, that Mr and Mrs Graham and the other RBP clients (out of the scores approached by Katz) who succumbed to Katz's threats and enticements are merely pawns to be manipulated by Katz/Discovery in their ongoing and vicious vendetta against Ronald Bobroff and RBP.


2.

2.1 We therefore submit that the Graham complaint or any other complaint which may be incited and contrived by Katz/Discovery be viewed and treated with the utmost circumspection and scepticism.

2.2 It is most significant that neither the Grahams nor any of the other four educated and literate clients we believe were entrapped by Katz, found any reason to have any complaints as to the service received, the fees charged or the results obtained by RBP for them, despite periods ranging from 6 - 25 months having passed from such clients receiving full payment and accounting from RBP.

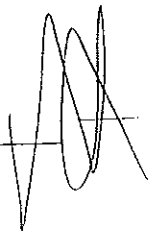
2.3 It is also significant that no complaint is made by the Grahams with respect to the substantive matters such as the quality of the legal services rendered to Mr Graham during the 42 months that his complex High Court claim was litigated, or the excellence of the experts engaged by RBP at its own cost, or the excellence of senior Counsel instructed by RBP at its own cost and risk, nor of the result obtained on the day of trial.

2.4 Van Niekerk in carrying out his brief on behalf of Discovery - his true client and the one he and they now admit is footing his no doubt substantial bill - had to scratch and scrape to

T.G. 

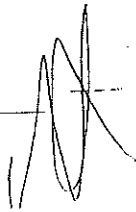
find some stick with which to beat RBP. Effectively all that has been raised in the "complaint" is:

- 2.4.1 Negative observations as to the attendance notes in the file. Some are criticised as being too short, others as lacking substance, yet others as being incorrectly dated, some as having the same type style and others for being typed rather than handwritten;
- 2.4.2 Van Niekerk via Graham suggests that absent a time note in respect of every single attendance, RBP's fee should be limited only to such notes as may be found in the file notwithstanding it being plainly obvious to any impartial and experienced Plaintiff litigator that the thousands of pages of mainly highly technical documentation making up the six lever arch files of the matter must have involved many hundreds of hours of professional time and the application of a legally trained mind;
- 2.4.3 Van Niekerk, directly and via Graham, casts aspersions on everyone but himself. He accuses Mr J Joubert, one of the most highly regarded and experienced Cost Consultants in Gauteng, a former, Taxing Master of the High Court, and previously senior Road Accident Fund Cost Consultant of lying;
- 2.4.4 He accuses Ronald Bobroff of fabricating an explanation as to how RBP's fee was derived in the Graham matter;
- 2.4.5 He accuses Darren Bobroff and/or RBP of creating file notes ex post facto so as to "ramp up" the time attendance, whilst ignoring the obvious absurdity of such accusation in that he finds file notes totalling only 132 hours whereas RBP's fee is described in the client account as being in respect of not less than 394 hours.
- 2.4.6 Surely if one was to "ramp up" time notes it would be illogical and absurd to do so without seeing to it that the additional time noted, and which clearly was not the case here, at least equalled or exceeded the time charged for;
- 2.4.7 The RBP files were made available for inspection by Van Niekerk at Fagri's offices subject to the express condition that Van Niekerk would not remove such files or any documents contained therein nor seek to copy same.

T.G. 

- 2.4.8 Without Fagri's knowledge or permission and whilst Fagri was in fact in office, Van Niekerk surreptitiously had Fagri's staff make voluminous copies of documents from RBP's file.
- 2.4.9 Van Niekerk on being challenged by Fagri in his letter dated 8 June 2011 baldly denies Fagri's allegation of unauthorised copying thereby implicitly calling Fagri a liar. He even alleges that Fagri offered him copying facilities.
- 2.4.10 Yet again where Van Niekerk had advised Fagri on 7 June 2011 that he (Van Niekerk) and his client, Discovery, had arranged a video conference during which he and his client would discuss resolution of the issues between RBP/SAAPIL and Discovery, the statement by Van Niekerk as to the video conference being arranged, is denied by Haydock of Edward Nathan's Johannesburg office in his letter dated 1 July 2011 in paragraph 3 thereof "Our clients are not aware of a video conference schedules for 8 June 2011. They have been, and remain, willing to discuss any concerns that SAAPIL may have. We are instructed that such a meeting is in fact being arranged by Mr Anthony Berlowitz (representing SAAPIL), directly with our clients".
- 2.4.11 In an apparently desperate effort by Katz/Discovery/Van Niekerk to dredge up as many captive RBP clients as possible Van Niekerk wrote to RBP requesting RBP's file in respect of client Msibi.
- 2.4.12 RBP responded on 10 June 2011 attached "RBP6" seeking its file reference number or copies of any documentation as it had no record of ever having represented a client of that name, as also confirmation that Msibi was a Discovery member and his membership number.
- 2.4.13 RBP's suspicions that Msibi was not a Discovery member who had been approached by Katz in the same way as the other five and whether Van Niekerk had actually been instructed by such an individual were finally confirmed when Van Niekerk wrote to Fagri on the 29 June 2011.
- 2.4.14 In that letter Van Niekerk now admits that he purported to act on behalf of the dependents of Msibi and that the late Msibi, far from being an aggrieved Discovery and former RBP client now enjoying the succour of Katz and Van Niekerk was simply Graham's deceased driver.

JLB



2.4.15 Van Niekerk now seems to have moved on from his role as Attorney sponsored by Discovery and as described by ENS's Haydock in his letter 13 June 2011 arising out of the consideration that "Discovery bore an obligation to its members to facilitate investigations by an attorney (George Van Niekerk ENS Cape Town) appointed to serve their interests, so that they might receive objective reassessment of their representation by RBP".

2.4.16 Given Van Niekerk's belated and implied admission that neither Msibi nor his dependents were Discovery members, even the most naive of observers would clearly understand that Discovery/Van Niekerk were now desperately trying to use the dependents of Msibi as pawns, enabling Van Niekerk to try his luck at finding something, anything in the RBP file with which to attack RBP.

2.4.17 As it turns out RBP have never represented such dependents.

2.4.18 We suggest that all of the aforesaid be taken into account in assessing motive and credibility on all issues contained in this or any other similarly contrived complaint which is lodged by Van Niekerk on behalf of Discovery's allegedly indebted members.

2.4.19 In fact, the conduct of Katz and those assisting, smacks of extortion and blackmail. Their conduct would also fall within the definition of corruption.

3. RBP'S REPRESENTATION OF MR. GRAHAM

3.1 THE MERITS

3.1.1 Mr. Graham sustained serious injuries inter alia comprising a brain injury and a fractured right humerus in a motor vehicle accident which occurred on the 4th September 2006. At the time he was a passenger in a vehicle belonging to his own plumbing business and then being driven by his employee Elvis Msibi. Msibi died some days after the accident of injuries sustained therein.

3.1.2 The circumstances of the accident were complex involving 3 vehicles. Mr. Graham, after he had recovered sufficiently, was unable to recall anything regarding the accident. His driver Msibi had died.

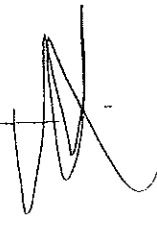
J.G.

- 3.1.3 The driver of the minibus taxi which was alleged to have caused the accident claimed that his vehicle's tyre had burst causing him to lose control of same.
- 3.1.4 A witness, A Lobb, named in the police report alleged that it was in fact the driver of a BMW vehicle travelling ahead of him, that he assumes went over onto the incorrect side of the road and side swiped the taxi, thereby causing the taxi's tyre to burst and that this in turn caused the taxi to collide with the vehicle in which Graham was a passenger. The witness did not see this due to a blind rise in the road.
- 3.1.5 The Defendants disputed liability on the merits at the pre-trial meeting approximately one month prior to the trial and continued to do so right up to trial. The challenge faced in proving the merits was that there was no single person who could testify as to exactly how the accident occurred so as to prove negligence and to overcome absolution.
- 3.1.6 RBP and Advocate Zidel SC were extremely concerned that the Plaintiff would be non-suited and left without any compensation whatsoever. RBP nevertheless had guaranteed his fees and likewise those of the 13 experts engaged in the matter.

3.2 THE CLIENT'S

- 3.2.1 Mrs. Graham was referred to the practice by Ms. G Van Niekerk, her insurance broker and had also seen the RBP Netcare Legal Helpline Pamphlet. She is a qualified bookkeeper who both prior to and subsequent to the accident, managed her husband's substantial plumbing business which employed 17 workers. She has a degree in psychology, and during the course of RBP's representation was studying for her honours degree in psychology.
- 3.2.2 She telephoned Darren Bobroff and discussed the accident and its consequences with him and at her request it was arranged that she would attend RPB's offices on 6th September 2006 to consult with Darren Bobroff, a director of RBP.
- 3.2.3 She did so and such consultation endured for some hours. On her own version and according to paragraphs 28 – 35 of her Affidavit the following matters were discussed:
- 3.2.3.1. She furnished information about the accident, ie. where and how she believed it had occurred;

16



- 3.2.3.2 The nature and extent of Matthew's injuries which are described as extensive;
 - 3.2.3.3 Details of their financial affairs;
 - 3.2.3.4 Their predicament i.e. how to run the plumbing business without her husband;
 - 3.2.3.5 The fact that a brain injury was quite different to other bodily injury and that neurosurgeons and neuropsychologists were reluctant to commit themselves to firm long term prognosis until 3 – 5 years have passed since the brain injury was sustained;
 - 3.2.3.6 She was furnished with an overview of the claim that could be lodged with the RAF. This would obviously have required review of the heads of damages and how same would have to be formulated and proven;
 - 3.2.3.7 The basis on which RBP's fees were calculated;
 - 3.2.3.8 That RBP would be prepared to take on Matthew's case on a no win-no fee basis i.e. that if the claim did not succeed Matthew and she would not be out of pocket for any RBP fees;
 - 3.2.3.9 As to how the damages recovered from the RAF would be dealt with as between Matthew and RBP;
 - 3.2.3.10 That RBP would deal with all aspects of the claim on his behalf, the involvement or otherwise which would be required in the matter by Matthew and her;
 - 3.2.3.11 The time span involved in the processing of the claim;
 - 3.2.3.12 The qualification applicable to RBP's agreeing to act on a no win – no fee basis. This is referred to both in the fees mandates as also in the first client interview letter and she was taken through these in detail;
 - 3.2.3.13 She was handed documents for signature. These would have included both fees mandates, various powers of attorney, authorizations to obtain copies of hospital records and the like;
 - 3.2.3.14 RBP's lengthy and detailed first interview letter 6 September 2006 which she was required to read and to sign for the copy given to her thereof.
- 3.2.4 Notwithstanding the aforesaid and obviously time consuming detail, she disingenuously alleges that the consultation covering all of the admitted subject matter referred to above only lasted 30 minutes. Intriguingly exactly 30 minutes, not 29 or 31. Merely reading the abovementioned paragraphs in her affidavit takes a careful reader some 15 minutes.

3.3 To traverse and rebut the 168 repetitive, often conflicting and overwhelmingly untrue allegations making up this contrived complaint would require a response even more lengthy and tortuous.

3.4 We have therefore decided in the interests of clarity and brevity to rather document what did occur in accordance with the file content. Further where necessary an appropriate rebuttal or denial is provided. To the extent that we omit to rebut any specific allegations same must be understood to be denied.

4. THE BASIS ON WHICH RBP ACCEPTED INSTRUCTIONS FROM THE GRAHAMS

Mrs Graham's allegations that she was "made" i.e. forced into signing mandates, that she was not aware that disbursements would be payable out of the damages recovered, that RBP's 30% cut would include all disbursements, that she unwittingly signed an hourly fee mandate, that the mandates were in fine print (presumably illegible), **are palpably untrue and improbable as will appear from the following sub-paragraphs:**

4.1 At the first consultation and as is admitted by Mrs. Graham, she was informed that:

4.1.1 RBP would accept instructions on a "No win no fee" basis;

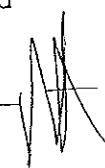
4.1.2 two fee mandates would require to be signed. The other mandate made provision for a time charge at a rate per hour in respect of all work done. One rate was provided for professional staff and another for purely administrative staff.

4.2 Mrs Graham is a University graduate. She holds a Bachelors Degree in Psychology. She did not sign any documents "unwittingly". This is a contrived version concocted by Van Niekerk.

4.3 Notably, no reference is made to any duress or force upon Mrs Graham in order for her to sign this agreement. She did so of her own volition.

4.4 In any event, the timing of the complaint makes it plain that this is a version that has been concocted by Van Niekerk and no previous complaints were ever received from Mrs Graham prior to Van Niekerk's intervention.


4.5 Both mandates extensively accord with the recommendations of the LSNP's Court Practice Committee. The time charge mandate was virtually identical to that which had

T.G. 

been promoted by the LSNP on its website during the early 2000's and the percentage mandate closely mirrored that which had been formulated by the Court Practice Committee a few years ago.

- 4.6 Both mandates made reference to the client receiving an accounting on the successful conclusion of the matter and once all monies due, i.e. capital and costs had been recovered. The percentage mandate contained an actual example of the accounting which would be rendered to the client in terms thereof, **specifically demonstrating that disbursements would be paid out of the damages recovered.** The time charge mandate made specific reference in paragraph 3 thereof to disbursements being paid out of the damages recovered.
- 4.7 The contents of the above mandates signed by Mrs. Graham and witnessed, as also the RBP first interview letter of 6 September 2006 signed for by her, give lie to her allegations that she was never aware that disbursements would be payable out of the damages recovered. She, (via van Niekerk- the drafter of her Affidavit), seeks to fabricate an atmosphere of duress at her first consultation with RBP. I.e. Paragraph 8 thereof alleges that she was "**made**" to sign the mandates.
- 4.8 Further, she/ Van Niekerk, alleges that the common-law percentage mandate was "**unlawful**". Van Niekerk is well aware as a member of the LSSA Contingency Fee Committee, that common law percentage fee mandates have been sanctioned and endorsed by the Law Society of the Northern Provinces since 2002, and that the overwhelming majority of personal injury litigation throughout South Africa save for the Cape, is conducted on such basis. Such mandates are certainly not unlawful as stated.
- 4.9 He would presumably also be aware that Mr Clem Druker, the Chair of that Committee, and a Cape Law Society Councillor, had announced in his written report at page 28 of the LSSA Annual Report to the LSSA AGM in March 2011, that the Cape Law Society was to follow the LSNP's example in this regard.
- 4.10 As admitted by Mrs. Graham in paragraph 35, she was handed and signed for RBP's client first interview letter. This letter specifically makes reference to the fact that:
- 4.10.1 *"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";*

56



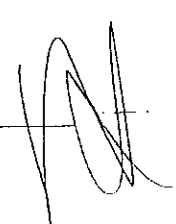
- 4.10.2 "Our fees which are payable out of the money recovered in your claim.... are calculated at the hourly rate contained in the fees mandate signed by you...."
- 4.10.3 "If you have entered into a contingency fee agreement with us in terms of which either the contingency fees act applies or where 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 1.3 above".
- 4.10.4 "All disbursements incurred in your claim will be paid out of monies recovered in your claim".
- 4.11 Mrs. Graham alleges that the mandates are "in fine print".
- 4.11.1 There is no "fine print" on the fee mandate. A copy thereof is annexed to the complaint as "JG6". As appears therefrom, it is in normal type print and would not and cannot be described as "fine print".
- 4.11.2 This is yet another concoction by Van Niekerk in his misguided attempt to put blame at the door of RBP and excuse the conduct of Mrs Graham when she signed the mandate agreement on behalf of her husband.
- 4.11.3 At no stage did Mrs Graham ever complain that she had not read or been alerted to the content of the mandate agreement. Furthermore, the first time that the term "fine print" ever arose, was in this complaint. Mrs Graham has never expressed any such feelings in this regard previously.
- 4.12 The consultation note dated 6 September 2006 is a composite note put together for trial briefing. Content rather than sequence is important and the note is a conglomeration of relevant information obtained from the client, the medico legal reports and other documentation in the file.
- 4.13 The fact that the note bears the note of the first consultation and makes some reference to some information obtained at such consultation is co-incidental.

5. PROCESSING OF THE CLAIM

- 5.1 The claim was at all times dealt with by or under the **direct supervision** of Darren Bobroff. Information required for lodgement of the claim was procured and in due course, the claim was lodged. No offer was forthcoming from the Road Accident Fund.
- 5.2 Counsel was briefed and summons served out of the Johannesburg High Court. Pleadings closed and the matter was enrolled for the allocation of a trial date. The 5th March 2010 was allocated.
- 5.3 Information was sought from the Graham's relating to personal, business and financial matters. Mr. Graham was a self-employed plumber and his business was substantial having an annual turnover of for the financial year prior to the accident in excess of R1 million and also employed 17 workers.
- 5.4 The extent of the Graham's and the business' tax compliance was not immediately apparent, and a forensic auditor was employed to review such financial statements as were available, as also to identify the various cash amounts which Mr. Graham had received from customers and deposited into his personal account and not that of the business.
- 5.5 Eventually, the auditor was able to produce a report on which the loss of income claim was to be litigated. Counsel was very concerned as to the viability of the loss of income claim given the substantial resurgence of the business and other troubling issues.

6. MEDICO LEGAL EVIDENCE

- 6.1 Given the extensive injuries sustained by Mr. Graham, careful consideration was given by Darren Bobroff as to which medical specialities were required, as also the choice of an appropriate expert in each speciality. The following experts were instructed and/or appointments set up for Mr. Graham:


5/5


EXPERTS FOR PLAINTIFF

- 6.1.1 Dr Bingle (Neurosurgeon)
- 6.1.2 Dr. D Shevel (Psychiatrist)
- 6.1.3 Bev van Zyl (Neuropsychologist)
- 6.1.4 Anneke Greeff (Occupational Therapist)
- 6.1.5 Dr. D Rossouw (Ear, Nose & Throat Surgeon)
- 6.1.6 Elna May (Industrial Psychologist)
- 6.1.7 Dr. G Read (Orthopaedic Surgeon)
- 6.1.8 Professor R Lurie (Maxillo Facial & Oral Surgeon)
- 6.1.9 Richard Turnbull (Forensic Auditor)
- 6.1.10 Ivan Kramer (Actuary)

EXPERTS FOR DEFENDANT

- 6.1.11 Dr. van der Jagt (Orthopaedic Surgeon)
 - 6.1.12 Jeromy Mostert (Counselling Psychologist)
 - 6.1.13 Christa du Toit (Counselling and Industrial Psychologist)
- 6.2 All these reports had to be carefully considered, compared with each other so as to verify consistency or otherwise on the part of Mr. Graham.
- 6.3 The reports were sent to client and thereafter in accordance with standard RBP procedure telephonic discussions ensued from time to time, primarily with Mrs. Graham who was very

T.G. 


much the dominant partner and also, because her husband consequent upon the brain injury was not as focused or articulate as she was.

- 6.4 The reports, medical accounts and records, all of which had to be perused and carefully considered on receipt thereof and again when preparing for trial, exceeded 2000 pages.
- 6.5 To suggest as Mrs Graham has done that none of these reports were ever discussed with her or her husband until preparation for trial commenced is simply not true and wildly improbable. Mrs Graham as a Bookkeeper and highly educated person would hardly not initiate such discussion if it was not initiated by RBP.
- 6.6 Mr Graham consulted with the experts referred to in paragraph 6.1 above. The Grahams clearly would have been interested in and would have wanted to know what the views of the experts were and what Darren's assessments of the reports were.


7 TRIAL PREPARATION & SETTLEMENT

- 7.1 Advocate Zidel SC was briefed for trial and a comprehensive brief running to numerous lever arch files and containing selected and indexed documents were forwarded to him.
- 7.2 Numerous telephonic discussions between Darren Bobroff and Counsel ensued with respect to the documentation, strategy, order and selection of witnesses.
- 7.3 Senior candidate attorney Clelia Caruso and candidate attorney Gina Tognocchi were allocated to assist in trial preparation and carried out numerous attendances under the direct supervision and instruction of Darren Bobroff to whom they reported.
- 7.4 A Consultation was set up with Counsel for the 3rd February 2010 and a two hour meeting attended by the Graham's and RBP professional staff took place. Lengthy telephonic discussions both prior to and also after the meeting ensued between Advocate Zidel and Darren Bobroff. A full report would also have been made in the normal course by Ms. Caruso to Darren Bobroff after each meeting.
- 7.5 A further consultation was arranged with Counsel for the 2nd March 2010 for further preparation with Mr. and Mrs. Graham arising out of issues which Darren Bobroff had identified required further preparation. This consultation was also attended by Ms. Caruso

JG



- and Ms. Tognocchi on the detailed and direct instructions and under the direct supervision of Darren Bobroff to whom a comprehensive report back was given.
- 7.6 Advocate Zidel confirms that he had telephonic discussions with his instructing attorney, Darren, to review issues and information which had arisen out of the consultation.
- 7.7 A consultation was set up for Counsel to meet with the Plaintiff's industrial psychologist. This was likewise attended by RBP professional staff on direct instruction and under the supervision of Darren Bobroff.
- 7.8 Advocate Zidel confirms that numerous telephone discussions took place between him and Darren Bobroff, whilst Advocate Zidel was preparing for the trial on the 4th March 2010.
- 7.9 On the 4th March 2010, a tender was received from the Defendant in an amount of R990,000.00 together with party and party costs and a future medical care undertaking. Darren Bobroff carefully reviewed all relevant information in the files including the medico legal reports, the financial statements and report, the industrial psychologists recommendations and predictions and the psychiatrist's assessment of Mr. Graham's personality pre accident so as to properly consider whether to advise client to accept the tender or not.
- 7.10 Advocate Zidel confirms that thereafter a lengthy telephonic discussion took place during the course of the day with him as to whether or not the tender should be recommended to client, the reliability or otherwise of the client's financial statements on which the loss of income claim would have to be proven, as also the viability of litigating for more.
- 7.11 Over arching all considerations on the tender was the very real risk of absolution in view of the absence of proper evidence based on actual observation as to who had caused the accident. As the Plaintiff bears the onus this was indeed a major risk.
- 7.12 On the 5th March 2010, the day of trial, Darren Bobroff carefully reviewed the numerous bundles which had been prepared for the Court, and all other relevant parties, together with Ms. Caruso and Ms. Tognocchi and thereafter dispatched them to Court to meet with Advocate Zidel and client.

T.G. 

7.13 During the course of the morning, Advocate Zidel remained in constant contact with Darren Bobroff as to developments, and both Advocate Zidel and Darren Bobroff engaged in negotiations with Attorney Ms Khan and Advocate Combrinck, representing the Road Accident Fund.

7.14 Eventually, Advocate Zidel was informed that the Defendant had given consideration to the arguments put forward by him and Darren Bobroff, had reconsidered the matter, and were now prepared to increase the initial offer of R990 000.00 to R1 979 852.89.

7.15 Advocate Zidel contacted Darren Bobroff for instructions and was given the go ahead to recommend the settlement to clients'. Advocate Zidel was requested to instruct Ms. Caruso and Ms. Tognocchi to return to the office with clients' so that they could consult with Darren Bobroff with respect to the procedures which would follow settlement of the claim and financial issues.

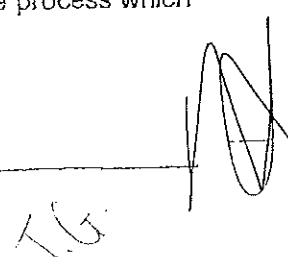
8 FINANCIAL MATTERS

8.1 After settlement of the matter, Darren Bobroff consulted with the Graham's at RBP's office on the 5th March 2010.


8.2 The Grahams expressed their appreciation for the professional services rendered and their happiness at the result obtained. This was particularly so as they had been very keen to accept the tender of R990 000.00 made the previous day but had accepted Darren Bobroff's advice not to do so until efforts were made on the day of trial to negotiate with the Defendant to increase the offer.

8.3 Darren Bobroff referred them to the two fee mandates which had been signed as also the reference thereto in the first client interview letter "RBP7", which Mrs Graham admits having received and signed for. Notwithstanding that the first interview letter specifically entitles RBP to elect which of the two mandates will govern their fee, the Grahams were invited to make the election.

8.4 He referred them to the percentage mandate in which an example of an accounting was given. The Grahams said that they wanted certainty as to exactly how much Mr. Graham would receive out of the settlement. Darren Bobroff then went through the process which



- would be followed if the fee were to be based on the agreed percentage as opposed to a fee being charged on a time basis.
- 8.5 He referred them to the percentage mandate in which an example of the accounting was given. On the percentage basis the 30% fee plus VAT would be levied against the settlement of R1 979 852.69 once received. Thereafter all disbursements would be offset and any residue would be paid to the client.
- 8.6 The file would be despatched to a cost consultant to prepare a party and party bill of costs. Once such costs were taxed or agreed with the Road Accident Fund's Cost Consultant and thereafter recovered, the full amount recovered less the cost consultants fee, together with the residue referred to above, would become payable to the client.
- 8.7 Given that the taxation or negotiation process on party and party costs depends on the ruling of the taxing master or the advice of the Road Accident Fund's cost consultant, it was not possible to say with certainty what amount would be recovered. Experience however indicated that a very modest recovery is made in respect of attorney's fees but a reasonable recovery is usually made in respect of Counsel and experts. **IT WOULD THEREFORE NOT BE POSSIBLE TO GUARANTEE MR GRAHAM AN AMOUNT IF THE FEE WERE TO BE BASED ON THE PERCENTAGE MANDATE.** This was explained to the Grahams.
- 8.8 Mrs. Graham again emphasized that they required closure by being guaranteed a net pay-out before leaving RBP's offices. She stated that she had heard from friends who had gone through the litigation process that experts and advocates charged outrageous fees and she did not want Matthew to end up with a paltry amount.
- 8.9 Darren Bobroff explained to her that RBP would be prepared to guaranteed a net pay-out amount. Decades of experience had indicated to RBP that in matters which had to be litigated all the way to trial that clients tended to net between 60 and 65% of the damages recovered.
- 8.10 On that basis, RBP would be prepared to guarantee Mr. Graham 60% of the settlement amount of R1 979 852.89 which netted out to R1 187 911.73 In addition, Mr. Graham would also receive a certificate guaranteeing payment of all future medical expenditure which would be required consequent upon the injuries sustained in the accident.

T.G.


- 8.11 Darren Bobroff referred the Grahams to RBP's settlement Discharge document, particularly paragraph 3 which states that *"I understand and agree that your total fee will be reflected on your final account once you have recovered those expenses for which the Defendant is liable."*
- 8.12 Both Mr. and Mrs Graham agreed to the 60% nett settlement guaranteed amount and expressed their satisfaction at such amount.
- 8.13 Darren Bobroff informed the Grahams of the usual delays involved in recovering both capital and costs from the RAF and warned them not to expect payment for some months.
- 8.14 The settlement discharge was signed by Mr. Graham and a receipted copy given to him. That document expressly spells out, that the amount deducted off the settlement amount so as to arrive at the net guaranteed amount to client is, *"utilized to cover the inevitable shortfall in the recovery of disbursements and the balance applied towards RBP attorney and client fee"*.
- 8.15 In light of Van Niekerk's allegations concerning our fees RBP engaged the services of an independent Cost Consultant Ms Cora Van Der Merwe. She:
- 8.15.1 holds Degrees BA (RAU) BA (HONS) UP cum laude;
 - 8.15.2 was employed on a contract basis by the RAF in Pretoria as a legal costs officer;
 - 8.15.3 has vast experience in drafting and taxation of attorney and client as well as party and party bills of costs in the Johannesburg and Pretoria High Courts where she opposed 5 000 Bills of Cost;
 - 8.15.4 as experience in preparing audit reports for a leading bank group.
- 8.16 It needs to be understood that an Attorney is not obliged, nor required to prepare an attorney/client bill of costs unless the client specifically requests same. We relied on Joubert's credentials and educated estimate of time spent in the matter and were comfortable to charge the client in respect of a substantially lesser amount of time than the certificate i.e. not 500 hours but 394 hours given that there were simply not sufficient funds available to cover more time notwithstanding Joubert's estimate of more hours.

8.17 Ms Van Der Merwe's pro forma time account based on the contents of the file equals 321 hours.

8.18 We concede that there could and should have been more file notes and we have no doubt that had file notes been made in respect of every single attendance substantially more time would have been recorded.

8.19 The total fee she derives justifies the fee charged to Mr Graham. It is again submitted that an Attorney is not obliged when negotiating a fee with a client to draft the attorney and client bill and is entitled to estimate the fee from his knowledge of the file and from guidance received from expert and experience cost consultants.

To the extent that Mrs. Graham's allegations differ from the above, same are specifically denied for the following reasons -

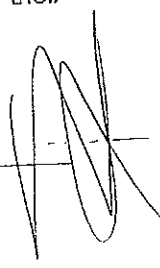
8.20 Some observations.

8.20.1 Mrs. Graham alleges in paragraph 59 and 65 that on being advised that the matter could be settled for R1 979 952.89, both she and Matthew immediately calculated that Matthew would receive R1 400 000.00. One assumes from that statement, that they were expecting and would have been happy with such amount.

8.20.2 One then wonders why neither of them insisted on R1 400 000.00 when the net pay out issue was discussed on the same day.

8.20.3 RBP have **with prejudice**, given the ongoing waste of time involved in having to deal with the repetitive and vexatious allegations in the complaint, offered in resolution of this complaint to adjust their account so that Mr. Graham would receive an amount in excess R1 400 000.00.

8.20.4 The offer was also made to call the bluff that the complaint arose out of the Grahams being unhappy on being charged on a time rather than a percentage basis. Given that the offer would place Graham in an even better position than he and his wife had hoped for, rejection of the offer would undoubtedly confirm their status as pawns in Katz's game.

J.S.


8.20.5 Absent the Grahams, Katz and Van Niekerk would be left having to scratch for some contrived complaint in the files of the other four RBP clients no doubt placed under duress by Katz.

8.20.6 Given that it is common cause that

- o Mr. Graham only came to complain at the instance of Katz and Discovery;
- o Discovery were demanding payment of R327 000.00 from him;
- o Discovery are funding what must undoubtedly be Mr. van Niekerk's substantial fees;

One is driven to the inescapable conclusion that the decision not to accept the above offer, was not the Graham's but rather that of their masters – Katz and Discovery.

8.21 The Grahams have not disclosed the terms of any arrangement between them and Discovery with regard to Discovery's claim for repayment of R327 000.00 and they, Katz and Van Niekerk are invited to do so.

9. FINALIZATION AND ACCOUNTING

9.1 On receipt of the damages from the Road Accident Fund and after payment of all disbursements, Mr. Graham was paid an interim payment of R900 000.00.

9.2 In due course and once the party and party costs had been recovered, Mrs. Graham called into RBP's offices on the 13th September 2010 and was handed the final cheque for Mr. Graham in the amount of R287 972.00 together with the Road Accident Fund's future medical expenditure undertaking. She was also given the final statement of account which was specifically referred to in paragraph 3 of the client settlement discharge admittedly received by her on the day the claim was settled.

- 9.3 A letter referring to the final cheque and medical undertaking was signed for by Mrs. Graham. (See "JG21" of complaint)
- 9.4 Mr. Van Niekerk, per Graham, for reasons which are not understood, repeatedly alleges that RBP appropriated the party and party cost recovery. This notwithstanding that Mr. van Niekerk has for months had RBP's final account in which the party and party costs are clearly reflected as a credit in the same way as the damages recovered.
- 9.5 Further he continuously suggests that by guaranteeing the client 60% of the damages recovered, RBP is in fact stipulating for a 40% fee. This is simply not true.
- 9.6 To revisit the accounting process again: The damages are recovered and thereafter the party and party costs. All disbursements are listed as debits as also the guaranteed amount to client are deducted from the total of damages and costs recovered.
- 9.7 The balance of funds available is the **only** amount available to satisfy RBP's fee. Very often that amount falls far short of being sufficient to cover the professional time actually spent on the matter at the stated bill out rate in the mandate.
- 9.8 In that event, RBP simply has to accept a fee commensurate with such amount. Given that the client needs to have some insight as to how the fee, limited though it may be, is made up, a purely illustrative exercise is done.
- 9.9 In this matter, Mr. Joubert had estimated that some 500 professional hours time had been spent. There was however only an amount of R738 044.67 available to cover RBP's fee plus VAT thereon of R103 326.25. This is then reflected as the fee with the illustrative narration namely *"To our nominal fee as discussed and agreed at the average charge out rate of R1,872.51 per hour in respect of no less than 394 hours of professional time"*.
- 9.10 In a matter where an exceptional party and party cost recovery is made yielding a nett residue of funds after deduction of all disbursements and the nett amount guaranteed to client; in excess of the value of the time spent by RBP in the matter, the client is paid such excess in addition to the nett guaranteed settlement amount. It is usually a swings and round-about process.

288

- 9.11 As will be noted from the table referred to in RBP's letter dated 31st May 2011 and repeated here, the nett fee to client in this matter was equivalent to 34% of the damages recovered and when the capitalized value of the medical undertaking is taken into account reduces to 29.6%.

Client name	Settlement amount	Fee excl. Vat	Fee as recovered in party to party bill excl. Vat	Nett fee excl. Vat/cost to client	Percentage ratio of nett fee excl. Vat to capital
Agar	217 000.00	128 289.34	63 150.40	65 138.94	30.01%
Ashford	315 017.50	142 606.49	51 222.21	91 384.28	28.78%
Graham	1 979 952.69	738 044.57	64 328.48	673 716.09	34.01%
Razak	548 227.89	221 862.86	54 133.57	167 729.29	30.59%
Vawda	101 860.36	53 015.44	34 287.14	18 728.30	18.39%

- 9.12 In the other matters, being other client's no doubt placed under duress by Katz into doing his bidding, the analysis reflects that RBP's fee as a proportion of damages ranges from 18% - 34%.
- 9.13 Finally it needs to be emphatically noted that where an attorney charges on a time basis, there is no obligation to limit the fee to any proportion of the monetary result obtained. It can and does frequently occur, especially in corporate litigation, that large corporate attorney firms will charge a client a fee which almost equals or exceeds the actual monetary result obtained.
- 9.14 The file was then archived and nothing further was heard from the Graham's during the intervening 6 months from 13th September 2010 until Mr Van Niekerk's letter of 9 March 2011 in which he purported to have been instructed by Mr. Graham. In this letter he requests information which according to Mrs Graham's Affidavit was clearly in her possession and presumably which would have been made available to Van Niekerk.

T.G.

289

- 9.15 At the very least this would include the details of the amount for which the claim had been settled and the net settlement amount paid to Mr. Graham as was set out in the client settlement discharge signed for and received by Mr Graham and referred to in Mrs Graham's Affidavit. Further Mrs Graham admits having in her possession the client first interview letter which specified the dual fee mandates. Surprisingly Van Niekerk professes in his letter dated the 21st June 2011 never to have been informed of same!
- 9.16 It is noted that Mrs. Graham denies in paragraph 84 that RBP's final account was handed to her when she collected Mr. Graham's final payment and medical undertaking.
- 9.17 It is palpably improbable that had she not received a full statement of account at the final consultation, that she would not have insisted on one then, or at some time during the ensuing 6 months which passed until she and her husband were approached by Katz.
- 9.18 We say this given that:
- 9.18.1 Mrs. Graham is a bookkeeper who has run her husband's large business for many years'
 - 9.18.2 is clearly financially astute,
 - 9.18.3 is a highly educated individual,
 - 9.18.4 effectively represented her husband throughout the 3 ½ years of litigation,
 - 9.18.5 according to a number of medico legal reports clearly runs the household and controls the purse strings,
 - 9.18.6 makes reference at least twice in her complaint in paragraphs 59 and 65 to her and husband anticipating on the day of settlement receiving a nett settlement of R1 400 000.00;

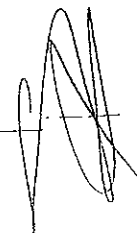
The above facts would certainly very strongly suggest that she would have applied her mind to how the moneys recovered would be dealt with, and she would certainly have insisted on a statement of account had she not been given one.

J.G. [Signature]

10. RBP'S FILE NOTES

- 10.1 Van Niekerk per the Grahams' alleges that some of RBP's file notes in the matter were fabricated so as to "ramp up" the attendances in order to justify the fee charged.
- 10.2 Creative language is used to describe the notes such as inane, vacuous, contrived and implausible etc., and doubt is cast on the genuineness of the notes because some of them are in the same print, although this is in fact not true.
- 10.3 We have never understood an attorney's personal file notes to be formal documents to be couched in perfect language and to be in the nature of a pleading. Rather they serve as a formal aide memoir or observation of events or facts essentially for the personal use of the Attorney.
- 10.4 Further, he queries why some of the attendances listed in some of the notes are not in the party and party bill of costs. Reference is made to one note referring to a Saturday attendance and to one or two other notes where he questions the dates.
- 10.5 To deal firstly with the issue of why some of these notes are not reflected in the party and party bill, we must defer to RBP's cost consultant Mr. J Joubert. It will be noted from his attached statement he was of the opinion that such notes as were not included in the party and party bill refer to attorney and client attendances. We rely on his judgement in these matters.
- 10.6 RBP outsources all its party and party bills. Mr Joubert has impeccable credentials and we have never had cause to be concerned in any way with respect to the party and party bills he has drawn and settled or taxed.
- 10.7 No certificate was presented to RBP for signature with regards to the Graham party and party bill and when the bill was returned as having been duly settled with Ms Estelle Heynes, a senior cost consultant representing the RAF, secretarial staff would have been instructed to request payment by the RAF of the amount at which the Bill had been settled.

JG



- 10.8 The bill was not perused on its return to RBP nor had it ever been presented for verification prior to settlement thereof.
- 10.9 To the extent that Van Niekerk alleges any irregularities with regard to any items in that bill we must defer to Mr Joubert whose explanation is contained in his statement attached hereto annexure "RBP 8".
- 10.10 Secondly, Van Niekerk alleges that RBP apparently fabricated notes *Ex Post Facto* to ramp up its attendances. Mr. Van Niekerk tallies up the attendance notes in the file and totals up the time spent in terms of those notes at 132 hours (see his letter 21 April 2011 - "JG52"). RBP's account to Mr. Graham refers to professional time of "not less than 394 hours" having been spent in the matter.
- 10.11 Assuming we had decided to "ramp up" the attendances in the file, to fabricate or even formulate notes in respect of attendances which ex facie the actual file contents must have obviously occurred, would have been futile and foolish to the extent that the exercise did not substantiate the 394 hours referred to in RBP's account to Mr Graham or in Joubert's Certificate, "RBP9"
- 10.13 RBP did not and would not have fabricated notes and the allegations are rejected with contempt.

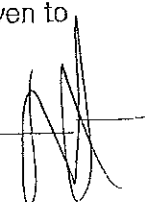
RBP's rebuttal of allegations relating to certain notes

Many file notes bear the reference "DB" as Darren Bobroff was the partner in charge of the file and directly supervised all staff who worked on the file.

10.14

- 10.14.1 File note dated 6 September 2006 - "JG34" referred to in paragraph 113.3 makes reference to the client first interview letter which Mrs Graham confirms having received. Issue is taken by Van Niekerk that the note refers to the letter as being dictated whereas it is a standard RBP letter.

Is Van Niekerk/Mrs Graham suggesting that such letter which was specifically dated and addressed to her simply appeared by magic in the file to be handed to her on that day. An instruction would obviously have been given to

J.B. 

a secretary to prepare such a letter and for such letter to include the appropriate information specific to the Graham matter.

Such letter once ready would then be presented to Darren for checking and same would then be signed and a copy handed to client and client requested to sign the office copy as having received a copy thereof.

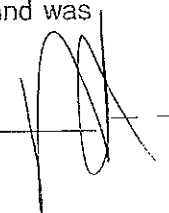
One wonders whether Mr Van Niekerk or any of his partners at Edward Nathan would not charge a client a substantial fee in respect of a standard form agreement or whether they would appropriately contend, that such agreement or any other standard document incorporates the application of a legal mind and skill, and to a lesser or greater extent always has to be specifically adapted to the particular client.

- 10.14.2 In paragraph 113.4 file note dated 3 October 2006, – “JG35” which refers to a telephone discussion with Mrs Graham, is denied. She labels the note as a fabrication because the note makes reference to her husband. **Given that the claim was her husband’s reference to him was understandable** and in the last line of the note where the word “and her husband” appears, the word “and” would almost certainly have been dictated as “about her husband” and misheard by the typist as “and”.
- 10.14.3 In paragraph 113.6 the file note “JG42” – dated 16 January 2010 is attacked because that date was a Saturday. It is routine for many members of RBP’s professional staff to work on Saturday mornings. Further she denies that the noted discussion with “client” i.e. her husband, took place. The majority of discussions were with Mrs Graham who was very much the Dominus and in a real sense the “client”.
- 10.14.4 Mr Graham consequent on his brain injury was not able to recall past events with great clarity and details of his earnings, economic activity and the like were obtained from Mrs Graham. Given her allegation that such information would not have been obtained from her husband, if it was not obtained from her she is invited to suggest from whom it would have been obtained. It is certainly evident from the file that such information was obtained, was

JG

transmitted to the Forensic Auditor and formed the basis on which the loss of income claim was successfully pursued.

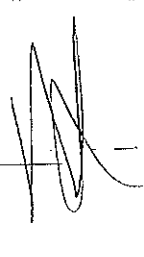
- 10.14.5 Mr. Van Niekerk challenges a note, "JG36" where DB instructs an office messenger on the issue and service of the summons. Possibly Mr. van Niekerk not having experienced the cost and embarrassment involved in a summons being invalidly served or served outside the prescriptive period, is not aware of the importance of seeing to it that the summons is issued out of the correct Court, that the messenger ensures that the original plus copies are properly stamped by the Registrar, that the summons is taken to the correct Sheriff for the service address, that the sheriff signs receipt for the original summons plus copy given to him and that where prescription may be an issue, the Sheriff's attention is specifically drawn thereto.
- 10.14.6 There are one or two other notes, "JG37" and "JG38" as to time taken to travel to and from Rosebank to the Johannesburg High Court and to the sheriff. These are obviously referring to the driver's time and not that of Darren Bobroff.
- 10.14.7 Much is made of a few notes being incorrectly dated i.e. file note Annexure "JG 43" referred to in paragraph 113.7 where the note is erroneously dated the 2nd February instead of the 3 February which was a consultation with Counsel and where RBP was represented by professional staff member Clelia Caruso and Gina Tognocchi. Interestingly Mrs Graham confirms such consultation in paragraph 154.2 as also the fact that it was lengthy yet nitpicks as to the date and the fact that the note was brief. So what!
- 10.14.8 Again in paragraph 113.8 of "Darren's" file note dated 2 March 2010 - "JG44" is questioned notwithstanding that Mrs Graham admits in paragraph - 113.8 attending the consultation with Counsel and two professional members of RBP's staff. The file note itself makes no reference as to who attended the consultation on behalf of RBP and it has never been claimed anywhere that Darren attended such consultation.
- 10.14.9 Clelia Caruso was a senior candidate attorney, the holder of an LLB Degree, had completed her Attorneys Admission Exam in September 2009 and was

JG


due to be admitted soon thereafter. She had received intensive training in personal injury work and was as competent, if not more so, than most attorneys of many years standing in this specialized area of practice. In addition she was assisted by and accompanied by Gina Tognocchi, another candidate attorney who held an LLB Degree and who was entitled to be admitted as an Advocate without further qualification.

- 10.14.10 Two hours of that consultation would have been spent by Clelia and Gina with Advocate Zidel and the remaining two composite hours would have been related to Darren meeting with the aforesaid and preparing them for the consultation by discussion of the matter and thereafter in debriefing them after the consultation, as also in attending telephonically with Advocate Zidel. This is RBP's standard practice.
- 10.14.11 File note dated 4 March 2010 referred to in Paragraph 113.10 – "JG47" is clearly a duplicate note bearing the incorrect date as the "4 March" and in fact relates to the attendance recorded in file note "JG44" which occurred on the 2 March 2010.
- 10.14.12 Mrs Graham in Paragraph 113.11 without furnishing any reason denies the attendance reflected in file note "JG48" on 4 March 2010. Advocate Zidel confirms that he did telephone Darren and was in turn telephoned by Darren whilst he was preparing for trial on that day to discuss various issues which arose during his preparation. Client was not alleged to have been present.
- 10.14.13 In paragraph 113.12 file note dated 5 March 2010 – "JG49" is challenged. That note refers to preparation of the files for Court on the morning of trial. Presumably Van Niekerk would be aware that the Rules of Court and Practice Directives require that indexed and paginated bundles be prepared. RBP does so in respect of all experts, the Court, copies for the witness, copies for Defendant, copies for file and so on.

He would also presumably be aware that Judges will often stand a matter down or worse, should such bundles not be available or during evidence prove to be incorrectly prepared or paginated.

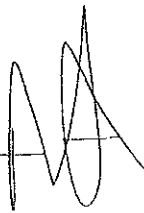
JG


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

11. THE PARTY AND PARTY BILL

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


J.G.



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

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

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

T.G. 

12.5 RBP were suspicious as to whether Van Niekerk was in reality truly instructed by these clients, and again subsequent events have proved these suspicions well founded in that he was not, and is paid by and reports to Katz/Discovery.

12.6 For the aforesaid reasons RBP insisted that Van Niekerk produce proper powers of attorney duly signed and witnessed. Revealingly it took him a considerable time to produce such documents clearly exposing the fiction that these were indeed his clients rather than his true client, Discovery Medical Aid.

12.6 Faced with 6 lever arch files clearly demonstrating an overwhelming amount of quality professional services relating to the 42 month litigation up to trial stage, and involving the incontrovertible fact that Mr. Graham obtained a superb service from one of the top specialist personal injury firms in the country at no upfront cost, and at the exclusive risk of such practice and that:

12.6.1 ten leading experts were engaged at the sole risk and cost of RBP:

12.6.2 the Defendant disputed the merits right up to trial;

12.6.3 the Defendant was persuaded to increase its first tender of R990,000.00 made the day before trial to R1,979,952.69;

He was left with nothing other than an attempted attack on some file notes, on Jerry Joubert and on RBP's representation of Mr Graham.

13. VAN NIEKERK'S PROBABILITY AND PARTIALITY

Van Niekerk casts aspersion on everyone in his path.

13.1 He accuses Joubert of fraud.

13.2 He accuses RBP senior director Ronald Bobroff of fabricating an explanation as to how RBP's fee was derived.

JS



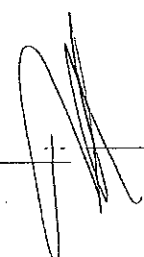
- 13.3 He accuses Darren Bobroff of fabricating attendances/notes.
- 13.4 He accuses Trevor Fagri, a senior and exceptionally highly regarded Attorney who served as a senior member of the RAF's panel of attorneys for decades, of lying. This because Fagri exposed Van Niekerk's surreptitious copying from the Graham file whilst he was granted access to the file expressly and solely for the purposes of perusal.
- 13.5 He misleads Fagri by informing him that Discovery have at his instance arranged a video conference to be held on the 8 June 2011 with him for discussion of the SAAPIL/RBP/Discovery disputes only to be unknowingly contradicted by Haydock of ENS Johannesburg, when Haydock in his letter 1 July 2011 responding to Fagri's accusations of bad faith on the part of Discovery advises that "*our clients are not aware of a video conference scheduled for 8 June 2011*".
- 13.6 Van Niekerk has adopted a duplicitous attitude. On the one hand, he utilises the Grahams and this society to pursue the Respondents. On the other hand, he does not wish to accept this society's *bona fides* and requests it to utilize the persons to conduct the investigation and hearings. There is no basis in law or fact for him to do so. Having chosen this forum to conduct the investigation, he too, must subscribe to its jurisdiction.

One wonders whether alone of all of us Mr. van Niekerk, is a paragon of virtue. For the reasons set out above we know he is not a white knight acting as the Champion the Grahams.

14. THE GRAHAM'S CREDIBILITY

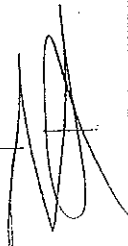
- 14.1 RBP and Advocate Zidel were concerned as to overcoming the evidential burden, in proving negligence on the part of either of the drivers of the other two vehicles involved in the collision.
- 14.2 Elvis Msibi, the driver of the vehicle in which Graham was a passenger died a few days after the accident and was obviously not available to testify.
- 14.3 J Dlamini, the driver of the minibus, also died as result of the accident.

J.G.



- 14.4 Colin Wilson, the driver of the other vehicle involved, a BMW, alleged that the minibus had come across the white line, collided with his vehicle and thereafter struck the vehicle behind him. It appears that this would have been the Mazda in which Graham was the passenger.
- 14.5 A witness, A Lobb, contradicts this and alleges "the reason the taxi was out of control was due to the BMW going over onto the oncoming traffic lane and side swiping the taxi. The result was that the taxi's tyre burst in the collision causing the taxi to lose control and veer into the oncoming lane where he collided with the Mazda Bakkie. The problem is that Lobb's statement admits that he lost sight of the BMW prior to the impact as the BMW disappeared over a blind rise.
- 14.6 Mr Graham informed Prof Lurie on the 29 September 2009 that he had suffered a loss of memory and could not recall of the events of the accident.
- 14.7 Mr Graham also informed Dr Shevel on the 2 February 2010 that he has no memory of the accident.
- 14.8 He informed Dr Bingle, neurosurgeon, on the 20 January 2019 that he can only recall events prior to and subsequent to the accident.
- 14.9 However in an affidavit attested to on the 16 January 2009 he purports to have a clear recall of the accident. Specifically:
- 14.9.1 "I saw a white Toyota minibus registration number RTS 338 GP driving in the opposite direction towards Kyalami, then suddenly the taxi come across the white lane into my lane and hit a vehicle silver BMW that was driving in front of me on the right hand side, then after that the taxi came towards our vehicle and collided head on with our vehicle."
15. Which version could be put to the Court. Msibi and Dlamini were dead. Wilson, the driver of the BMW alleged the cause of the accident to be the taxi driver. Lobb, the witness alleged the cause of the accident to be the driver of the BMW. Graham given his mutually inconsistent versions could certainly not be put in the box on the issue of liability.

J.G.



Given the mutual incompatibility of Graham's Affidavit to the Police in which he specifically recalls events with his denial of recall to three medico legal experts the irresistible conclusion is that Matthew Graham lied either to the police or to the experts

16. Our submission in paragraph 2 of this letter which cumulatively point to this being nothing other than a contrived, unsubstantiated, unwarranted and malicious attempt to harass, intimidate and discredit Ronald Bobroff and RBP Inc we suggest have been borne out by what we have referred to.

17. What clearly is apparent is that:

17.1 Mr Graham received the very best specialized professional service and an outstanding result;

17.2 RBP's fee was fair, reasonable and agreed;

17.3 RBP displayed the utmost transparency and accountability to the client;


17.4 Van Niekerk's credibility and motives are subject to question;

17.5 Mr Graham's credibility is demonstratively unreliable;

17.6 Mrs Graham's allegations as to not understanding mandates, explanations or much indeed is wholly inconsistent with who and what she is and the proven facts. Her allegations reflect adversely on her credibility.

18 We contend that this contrived complaint should be dismissed as being without substance.

Yours sincerely


RONALD BOBROFF & PARTNERS INC.

J.G.

