

COMPANIES & INVESTMENTS

EXPOSED

Unsettling Discovery

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

Ronald Bobroff, ex-president of the Law Society of the Northern Provinces (LSNP), says Discovery is funding legal claims against his firm by a former client because he has exposed "their longstanding and ongoing non-compliance with the Medical Schemes Act". Bobroff's allegations against Discovery centre on the medical aid's alleged habit of forcing members who have been injured in accidents to sign a document pledging that they will claim their costs from the Road Accident Fund (RAF), and if successful will refund Discovery.

"The way they force members or their families who have been injured in road accidents to sign an undertaking to claim from the road accident fund at the members' risk and cost, is unlawful," says Bobroff. "Discovery does this under threat of immediate termination of medical care, often when the member is in intensive care, unless the undertaking is

signed."

Bobroff claims that Discovery forces members to sue at their own risk and cost in order to avoid the lengthy and expensive process involved in trying to successfully claim for accident damages from the RAF.

Dr Jonathan Broomborg, CEO of Discovery Health, wrote in an email to *Finweek* that the medical aid places the onus on its members to make claims against the RAF.

"The rules of the DHMS (Discovery Health Medical Scheme) simply state that if members are involved in an accident leading to healthcare expenses paid by the scheme, the scheme requires from them to submit a claim to the Road Accident Fund (RAF) at no cost to the member, and should the RAF pay out medical expenses, that the member would then be required to refund these to the scheme."

Bobroff says Discovery is in breach of the Medical Schemes Act because the company does not inform its members that medical care for injuries sustained in road accidents may be terminated if they don't agree to claim from the RAF. This is despite the fact that the law requires

Discovery to inform its members that it does this.

"Apart from cheap gym contracts and movie tickets, were you, as a Discovery Health Member, told that if you're involved in a third party incident like a road accident, you are expected to sue the third party at your own cost and risk?" Bobroff asks. "This kind of litigation can be very expensive, risky and taxing especially if you're ill after an accident. If the claim fails, Discovery takes no responsibility for the costs and the member must bear the costs."

He says Discovery fails to inform members or prospective members of this liability until it's too late.

"Discovery in essence doesn't tell members this up-front and often (following an accident) the member or next of kin is threatened with immediate termination of medical care if the member or next of kin does not sign the indemnity declaring they will claim from the Road Accident Fund. Discovery effectively forces these people to litigate," says Bobroff.

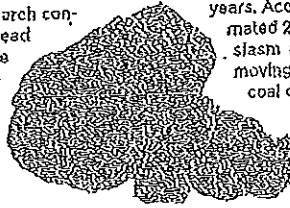
Jeff Katz, Discovery's legal services head, rubbished the claims. Katz says Discovery "will never force a member to sue any third party like the RAF".

Katz says that Discovery's rules do make provision for taking the action against members.

4. I have been informed that should I not undertake to reimburse Discovery Health or if I fail to honour my obligations in terms of this Undertaking for past hospital and medical expenses paid on my behalf for injuries sustained by me in the incident, any payments made by Discovery Health will be reversed and will be for my account. Furthermore, Discovery Health will disallow liability for payment of any future costs relating to the incident.

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MORE OPPORTUNITIES IN MOZAMBIQUE: Research conducted by Rajat Kohli, Standard Bank's Global Head of Mining and Metals, suggests that Mozambique will need to invest \$5bn in the next five years to upgrade its infrastructure, with the economy expected to grow by around 8% in 2012 and another 8% in 2013. Kohli identifies the Moatize coal basin as being able to produce about 100m ton of coking coal per annum within the next five



years. According to the IMF, Moatize holds an estimated 2.5bn tons of coal. "There is a lot of enthusiasm about it, but the challenge relates to moving the coal. As mining in the basin expands, coal output will exceed railway capacity, even with further upgrading. Miners want to get the product out quickly and the Mozambican government wants development," concludes Kohli.

"But we don't enforce it. It's simply there in the event the medical scheme needs the ability to take action against a member."

The Medical Schemes Act makes specific reference to a medical aid's obligation to make full disclosure to prospective members and members on admission to the scheme of all relative terms and conditions. This includes that members must receive a detailed summary of the rules.

"Not one of our clients going back many years nor a single client of many SAAPIL (South African Association of Personal Injury Lawyers) attorneys, who are members of Discovery Medical Aid,

have reported that they were ever informed by Discovery's brokers or Discovery during often lengthy membership of any conditions applicable to road accident generated medical costs," says Broberg.

He also says that numerous complaints have been made against Discovery by clients of SAAPIL to the Council for Medical Schemes (CMS).

Broberg counters: "The CMS has unequivocally dismissed one complaint on the matter to date."

"The CMS confirmed that the scheme had informed the member adequately, and was within its rights to request the member to refund the expenses."

Discovery says it expects that the CMS "will dismiss all the complaints for the same reasons as it dismissed the first complaint".

When *Finweek* asked the CMS about matters relating to complaints against Discovery, we were referred to its annual report.

Bobroff says the complaint that has been dismissed is currently under appeal.

Broberg points out through that members of DHMS are fully covered for any healthcare claims arising from a motor vehicle accident or any other injury, regardless of whether there's an element of third party insurance. He also says it's untrue that DHMS does not inform its members of the rules relating to third party claims.

"We indicate such in our benefit guides, on the Discovery website, and members can at any time obtain a full copy of the rules," says Broberg.

When asked if Discovery brokers make it clear to members or prospective members that there are terms and conditions regarding road accident generated

medical cover, he replied that the medical aid did not give its brokers "scripts" telling them what to say, or what not to say.

"Discovery cannot therefore confirm or deny what was said by any particular broker to any particular prospective member," says Broberg.

Discovery-funded attorneys have now lodged a complaint against Bobroff's firm (RB&P) with the Law Society of the Northern Provinces (LSP) on behalf of an ex-client of the lawyer.

George van Niekerk, of Edward Nathan Sonnenberg, says the complaint against Bobroff centres on an allegation that he took up to 40% of a client's RAF payout, whereas the original agreement was that he would get 30%. Van Niekerk alleges that Bobroff claimed that he and his firm had worked 500 hours on the case: "It couldn't have been more than 132 hours on this case," says Van Niekerk.

Bobroff denies the allegations.

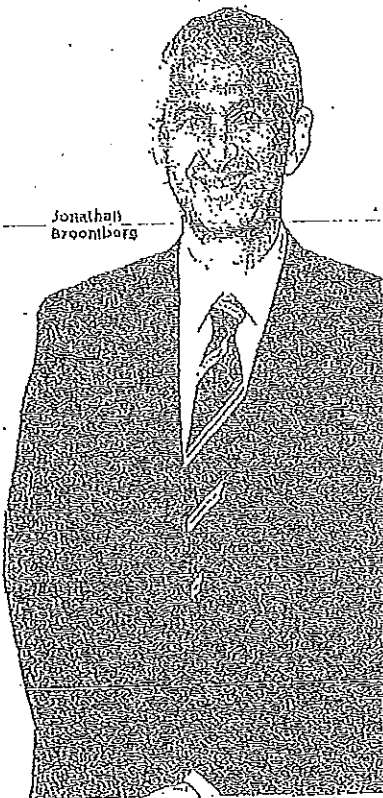
"The relevant matter was very complex and very risky," he says. "The file contained more than six lever arch files and thousands of documents."

Bobroff told *Finweek* that the fee agreement was in line with common law contingency fee rules (following such agreements) set by the Law Society itself. He claims the complaint against him is a vendetta driven by Discovery.

"How else does an injured plumber afford three senior Edward Nathan Sonnenberg attorneys, two junior advocates and two senior counsel including Jeremy Gauntlett SC, to drive a complaint against my practice to the law society?" asks Bobroff.

Broberg confirmed that Discovery was supporting the complainant's case against Bobroff.

Jonathan Broberg



- 7.2 That Katz was prepared to have Discovery waive any claim against me with respect to the amount of approximately R500 000.00 they had, and were demanding from me in respect of medical expenses.
- 7.3 The impression I got was that Katz was very emotionally involved and wanted to "buy" me off so that I be used by him to neutralize Ronald Bobroff in his endeavours to protect his clients, as also the clients of other Attorneys, who had been and were being harassed for payment of monies by Discovery/Katz under circumstances the same as applied to me.

"We're doing it to ensure that our members' complaints are fully investigated," he says.

Affidavits that have been submitted to the Law Council alleges that Discovery's legal department has gone so far as to allegedly bribe Discovery members to participate in the action against Bobroff.

"Several members, who are clients of my practice, allege that the head of the Discovery legal department attempted to bribe them into assisting Discovery in the attack on my practice," Bobroff alleges. "In return for their assistance Discovery told them it would not claim

a refund of the medical costs it had paid on their behalf."

Finweek is in possession of copies of the affidavits lodged with the Law Society by these members. One of the affidavits by an ex-Discovery Health member who alleges that Jeff Katz tried to bribe him by offering to waive the R500 000 in medical costs it was claiming from him in return for his help in "neutralising" Bobroff.

Katz denies all the charges and says this has never happened.

"This is all completely untrue. The facts are that Discovery, to protect our

members, has made complaints against a person who has acted unlawfully. The result is that a number of ridiculous charges have now been made against Discovery and against me," said Katz.

A representative of the LSNP, confirmed to *Finweek* that the body is still investigating the complaint against Bobroff's practice.

"The matter is sub judice."

He also confirmed to *Finweek* that the Law Society is investigating complaints made against Katz.

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