

### **Paragraph 7.1**

“ It is common cause that Attorney van Niekerk’s legal fees are being paid by Discovery Medical Scheme (Discovery). This is peculiar indeed”.

### **Paragraph 7.2**

“If Discovery had a legitimate interest in the matter, it should have brought an application to be joined as a party to the proceedings”.

### **Paragraph 7.3**

Despite the fact that Discovery’s involvement was extensively dealt with in the affidavits filed of record in the first application, attorney van Niekerk has yet to take the Honourable Court into his confidence and to fully disclose the facts relating to Discovery’s involvement, its motives, its interests and the extent and nature of his instructions”.

### **Paragraph 7.4**

Attorney van Niekerk initially denied that he acts for Discovery. He deposed to an affidavit and stated in paragraph 47 of the affidavit:

*I also deny that I act on behalf of Discovery Health or any of the entities in the Discovery Group of Companies.*

### **Paragraph 7.5**

“it is well known in the legal fraternity that attorney van Niekerk and his firm, ENSafrica, act on behalf of Discovery”

### **Paragraph 7.6**

“Attorney van Niekerk's allegation was contradicted by an official statement that he had issued. He said the following In the statement:

*ENS (Edward Nathan Sonnenbergs) 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 and Ronald Babroff & Partners Incorporated Attorneys.'*

**Paragraph 7.7**

“Attorney van Niekerk has yet to explain the abovementioned contradiction”.

**Paragraph 7.8**

“The fact that attorney van Niekerk acts for Discovery is also reflected in his *curriculum vitae* that can be found on the website of ENSafrica”

**Paragraph 7.9**

“In the first application attorney van Niekerk also attempted to explain that the application was brought in the public interest and not in the Grahams' interests. The Law Society did not accept attorney van Niekerk's contention in this regard then and I do not accept his submissions now either.”

**Paragraph 7.10**

“ The most probable scenario is that the first application as well as the counter-application were brought on instructions and in the interests of Discovery, which has a long-standing feud with the Bobroffs. The litigation is the result of the personal and acrimonious dispute between Discovery assisted by attorney van Niekerk and the Bobroffs”.

**Paragraph 7.11**

“ It is significant that all the former clients of the Bobroffs referred to by attorney van Niekerk in his affidavit are members of Discovery, This is no coincidence”.

### **Paragraph 7.12**

“In a statement issued by Discovery on 26 October 2014, it said the following:

#### **Overreaching and other charges against Mr Bobroff**

*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.*

### **Paragraph 7.13**

“On 5 November 2014 Fin [24.com](http://24.com) reported on allegations of misconduct and unlawful action on the part of the Bobroffs and the saga concerning Discovery and its attorneys ENSafrica on the one hand and the Bobroffs on the other (annexure 2).

### **Paragraph 7.14**

“[Polity.org.za](http://Polity.org.za) reported on 29 October 2012 that ENS was instructed by Discovery to assist a number of Discovery members who are former clients of the Bobroffs. According to the said article Discovery is concerned about the professional fees charged by the Bobroffs and the impact of these fees on the compensation received by claimants. The said article also stated that further enquiries should be directed at either attorney van Niekerk or his associate, Ms Annemarie Joubert (annexure 3)”.

### **Paragraph 7.15**

“Bizcommunit .com reported on 7 November 2012 on a statement issued by attorney van Niekerk to the effect that he was instructed by Discovery to assist members of Discovery who are former clients of the Bobroffs. Attorney van Niekerk also said that it was he and ENSafrica who discovered that the Bobroffs had entered into various contingency fee agreements that appeared to attorney van Niekerk and ENSafrica to be unusual (annexure 4). Attorney van Niekerk and ENSafrica most probably received their instructions in this regard from Discovery”.

### **Paragraph 7.16**

“ The fact that Discovery is funding attorney van Niekerk's legal fees was also reported on in a [Personal Finance](#) article which was published on 4 November 2012 (annexure 5),”.

### **Paragraph 7.17**

“A similar article appeared in [bdlive.co.za](http://bdlive.co.za) (annexure 6)”.

### **Paragraph 7.18**

“[Risksa.com](http://Risksa.com) reported on 30 October 2014 that Discovery is supporting a case against the Bobroffs (annexure 7)”.

### **Paragraph 7.19**

“There can be no doubt that Discovery and attorney van Niekerk were the driving force behind the first application and that they are the driving force behind the counter-application”.

### **Paragraph 7.20**

“ in one of attorney van Niekerk's statements he accused the Bobroffs of litigating in the media. He raised as a concern the Bobroffs' lack of respect for the Law Society, He did so in circumstances where he himself has consistently treated the Law Society with nothing but contempt and in circumstances where he himself had issued several media statements concerning Discovery and the Bobroffs”.

### **Paragraph 7.21**

“Discovery appears to operate behind the scenes in a clandestine manner and funds litigation to which it is not a party. Discovery's involvement and motives are not explained by attorney van Niekerk”.

### **Paragraph 7.22**

“The feud between Discovery and the Bobroffs is personal and acrimonious in nature and I do not accept that Discovery and attorney van Niekerk, or the Grahams for that matter; merely act in the "public interest”.

**Paragraph 7.23**

“Discovery's involvement and interest in the Bobroff matter was also demonstrated by the fact that Mr J Katz (Katz), the in-house legal advisor to Discovery, attended the hearing of the first application”.

**Paragraph7.24**

“I will refer to the involvement of attorney Millar, who also attended the hearing of the first application, in more detail below,”.