

Lawyers, court reporters cry foul over continuing practice

Though the practice is banned in Massachusetts, local court reporters claim their national competitors are continuing to partner with insurance carriers to provide transcription services at depositions — a cozy arrangement that plaintiffs' lawyers complain is driving up litigation costs for their clients.

The state's anti-contracting law, G.L.c. 221, §91D(b), prohibits court reporters from entering into exclusive arrangements with attorneys or anyone who has a monetary interest in the outcome of a case. But that's exactly what national court reporting firms are doing with insurance companies, according to members of the Massachusetts Court Reporters Association.

"When insurance companies and court reporting agencies enter into an agreement, whether formally or with a wink-wink agreement, the other side — for the most part, the plaintiff-litigant — suffers," Lisa Marie Phipps, director of the MCRA's board, writes in an email to Lawyers Weekly.

Such partnerships between court reporting companies and insurers prompted Massachusetts and a number of other states to pass laws banning the practice more than a decade ago. And yet it's been business as usual, according to Phipps, who claims plaintiffs are being forced to use national court reporting agencies that charge high page rates and delivery fees, and even levy charges for services not ordered.

"Plaintiff counsels' costs to litigate are going up, and they are now thinking twice about taking a deposition and/or ordering transcripts," she says.

Such was the case for Worcester attorney **Paul J. Franco**, who represented two

out-of-state clients — one a resident of Texas and the other from Washington — in a lawsuit involving a rear-end crash in Westborough in December 2012. The responsible driver was operating an Avis rental car, so Avis had the primary coverage.

In March, Franco made arrangements to use Worcester-based McCarthy Reporting Service for his clients' depositions. But about a week before the hearing, he says he was told by defense counsel that Avis would not pay for the deposition unless national court reporting firm Veritext was hired.

His clients testified via video conferencing, with court reporters on location and testimony lasting just over an hour each. Then he was hit with a \$3,318 bill for one client and a \$2,989 bill for the other, about double what he says he's normally charged.

"We were like, 'What, are you kidding us?' We didn't think the cost was going to be anywhere near that," Franco says. "For that amount of money, I could've had our clients fly in first class and held the depositions here in Worcester."

Franco says he took care of part of the Veritext bill, "but I told them to pound sand on the rest."

In an email, Valerie E. Berger, Veritext's senior VP of project management and marketing, states that her company "is aware of all of the regulations in the states where we do business and complies with all rules, laws and regulations including [G.L.c. 221, §91D(b)]" and that Veritext "does not have any relationships that would violate [G.L.c. 221, §91D(b)]."

She goes on to say that Veritext's rates are determined by the competitive marketplace.

"Attorneys are sophisticated consumers of

our services and understand the value they receive," Berger writes. "Every attorney at a deposition is a potential client. Veritext strives to provide the best overall service and value to every attorney attending a deposition."

But not everyone is a believer. According to **Brian P. Durkin**, who practices at **Zaim Law Firm** in Lowell, other national court reporting agencies are charging similar high rates in suits involving insurance companies.

Durkin says he typically uses Boston-based G&M Court Reporters and Video, or Springfield's Catuogno Court Reporting, which charge him about \$3 a page for deposition transcripts. But prior to a client's deposition in July in a car accident case, a lawyer representing Liberty Mutual told him he was required to use Hutchings Litigation Services of California.

Durkin says he received a \$250 bill for the 31-minute-long deposition.

"They charge you the highest billable wage for an attorney in Boston," he says, adding that while big insurance carriers may be able to pay the higher rates, for private individuals like his client, the extra expense adds to the already high price of litigation.

Representatives from Hutchings did not immediately respond to requests for comment.

According to the MCRA, the anti-contracting law was intended to promote free trade among court reporters and to protect consumers by allowing a free-market economy to exist. Someone aggrieved by a violation of the law is entitled to a review in Superior Court and equitable relief, but there are no penalties for violators, Phipps laments.