

# Using Computer Animation in Your Trial

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## Products Liability

The modern products liability trial has become a battle of experts. The complexity of expert witness testimony presents a problem for the trial attorney. How do you present complicated and often boring scientific testimony from experts in different disciplines in a way that persuades the jury and does not put them to sleep. One solution is the use of computer animation. It has the unique ability, when used as demonstrative evidence, to synthesize the testimony of diverse experts and present it on television, a medium with which the jury is familiar. The use of computer animation in trial is becoming more widespread. It is no longer relegated to the high-exposure case. Its admissibility has been recognized in both state and federal court and, most recently, has been successfully used during opening statement. It is a technique the successful trial practitioner can no longer afford to ignore.

Computer animation should be selected when regular videotape cannot be used. This most often occurs when the scene of an accident has changed, the incident to be recreated would be too dangerous if attempted with stunt men or the perspective your expert witness wishes to present is impossible with current technology. The decision to use animation is only the first in a series of hurdles the trial lawyer must clear before the final product is ready for court. What follows are some practical tips on how to prepare a computer animation for trial, and the factors that affect the cost of its production.

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The time needed to prepare a computer animation is uniformly underestimated. Consider some of the logistics you will encounter. You must schedule time with the animation service; your expert will need to meet with the animator on more than one occasion and experts are hard to schedule unless done well in advance; the animation when first prepared will have mistakes in it that need to be corrected by your expert (if your expert is out of town or out of state, add more time); your accident reconstruction must be complete for the animator to have sufficient data and, as the trial attorney, you must be available to view it during its creation to make sure it accurately depicts the testimony you intend to present at trial.

### Be Attentive to Detail

There have been occasions where an animation has been created for trial only to have the expert, under cross examination, admit that while he directed its creation and feels that it accurately illustrates his opinion, the animation contains mistakes. For example, light should not pass through concrete and the wheels of a car should not pass beneath the surface of the road. These details may sound obvious, but in the haste to prepare the animation for trial, the animator and the expert may overlook "minor" details. However, "minor" details are embarrassing to your expert and undermine his and your credibility.

### Do Your Homework

The requirement for the admission of demonstrative evidence is that it be illustrative of a witness's testimony, be substantially similar to the facts of the particular case and be relevant. For the animation to withstand a challenge under Evidence Code 352 it must be grounded in the data you wish to illustrate. For instance, if you are depicting a highway collision and wish to use the animation to illustrate the testimony of an accident reconstructionist, the

scene depicted must be made to scale. If you have not obtained the Department of Transportation drawings for the highway, or surveyed the scene, you run the risk that an objection that the animation is not "substantially" similar will be sustained and your expensive exhibit will be excluded.

### Direct Your Animation

It is a mistake to leave the creation of your animation up to your expert and the animator. They do not know the context within which you intend to present the expert's testimony. A good example of the need to direct your animation lies in the "pause" button on the VCR to be used at trial. The natural assumption is that when you wish your expert to explain the detail in your animation, he will step down from the stand at your direction and press the "pause" button on the VCR. Stopping an animation at exactly the right time is difficult when done in the quiet of your office. During trial, with a judge and jury looking on, it is nearly impossible. The solution is to prepare a second cassette of the animation with pauses recorded into it by the animator at preset times. This leaves your expert ample time to step down from the stand and press the "pause" button at the right time.

### Authenticate the Animation

Current animation software permits the authentication of time and distance by the use of a simultaneous two-dimensional program which can be called up to check any frame in the animation. Your expert should check all relevant portions of the animation where time and distance are important to insure that his opinion is supported by the authentication software.

There is a shortcoming in current versions of animation software now in use. The authentication images cannot be copied onto video cassettes. If authentication is needed beyond the testimony of your expert, a video camera

can be used to copy the authentication images off the animator's monitor. Given the need for visual authentication it is likely that either the necessary hardware or software modifications will be made to permit copying of the authentication images onto a videocassette.

The cost of a computer animation can range from \$5,000 to \$50,000. A good rule of thumb is that the more time it takes the animator to create the images and vary perspectives, combined with the overall length of the final product, will determine the cost. A few images, a single perspective and simple movement will result in an animation on the low end of the cost scale. Detailed scenes, complex movement by a variety of objects and a long "runout" from a variety of perspectives will result in a cost on the high end of the scale.

When preparing your proposal for the animation service it helps to be as detailed as you can concerning what you want. If you tell the animation service that you think "animation may be helpful in this case" and seek their advice on what should be done, without a clear idea what you want, you may end up with more than you need at a charge higher than your case can justify.

### A Powerful Tool

Computer animation is a powerful tool to simplify complicated testimony. However, it requires substantial effort on the part of the trial attorney as well as the qualifying expert to produce it in an admissible form. In the proper case the use of computer animation might turn out to be the margin of victory. As technology improves and becomes more affordable, the use of computer animation is certain to proliferate among successful practitioners. In order to avail themselves of this trial technique in proper cases and to be prepared to defend against its use by their adversaries, products liability specialists should include this powerful strategy in their trial arsenals.