ATTORNEYS WIN CASES WITH ANIMATIONS

by Scott J. Taylor, CDP

I n this era, use of mediation and arbitration encourages attorneys to seek out new tools which catalyze early settlements. Computer animations are just such a tool.

Affordable animations are increasingly being used by attorneys to provide a technological edge which expedites early settlements, improves settlement valuation, and completes case theory.

Why Animation Works

ABA study on jury comprehension demonstrated what every litigator knows: " . . . complex fact patterns often leave jurors confused . . . Jurors reported difficulty deciding critical issues as a result of the sheer volume of information.[1]

The secrets of high jury comprehension are in the statistics. "Seventy-five percent of what we learn is received visually...Only ten percent of information delivered verbally is remembered after three days. More importantly, sixty-five percent of information delivered both visually and verbally is remembered after three days. Thus, the *combination of verbal and visual delivery of information is six times as effective as verbal delivery alone.*[2] (emphasis added)

Animations provide a quick and easy understanding of facts, expert reconstructed engineering data, and portrayal of witness statements. Animations assure that all jurors receive the same image of how a witness depicts the circumstances, so that mistakes of imagination are prevented. Jurors can clearly see the obviousness of the circumstances and the reasonableness of the action taking place. Further, since most jurors are experienced drivers, they can readily feel and experience the trauma of a traffic accident. An additional benefit is that animations usually neutralize or prevent confusing cross examinations.

Return on Investment

Conservatively, analysis of cases indicates that settlement increases or decreases have often returned animation's costs by several
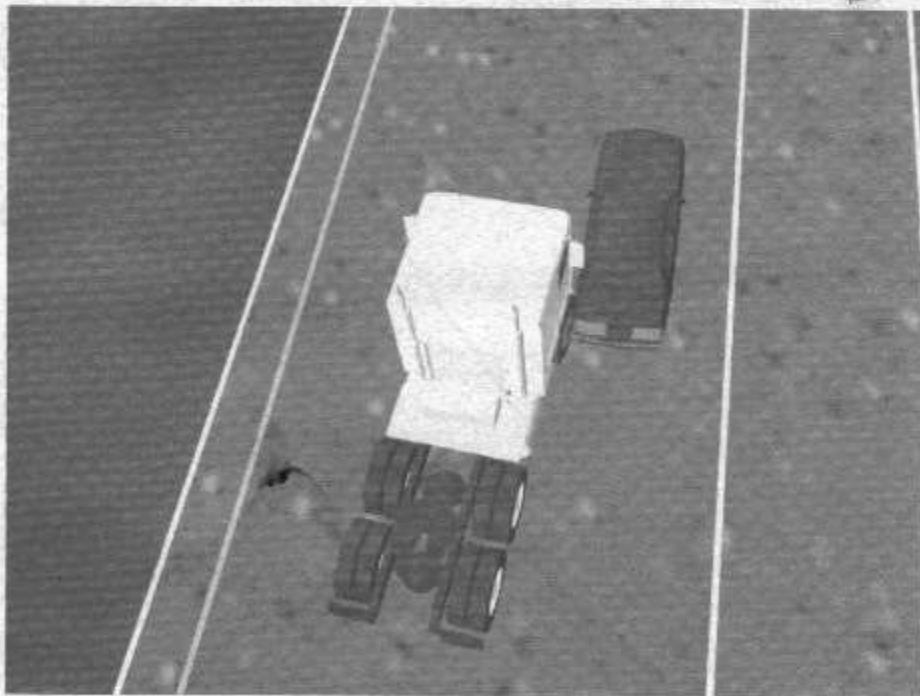
times over, many by tenfold, and some even greater. Further, expensive litigation is minimized owing to earlier settlements before or during trial. To additionally minimize costs, it is usually not necessary for the animator to visit the site of the accident. Instead the animator relies upon the expert's data.

The favorable settlement occurred early in the trial. The driver of a tractor trailer cab had stated to police after the accident that "he thought he was involved in the accident." However, the police inspected his cab and decided he was not involved. Later the plaintiff's expert witness,

Fracture at washer/screw

FRACTURE
Diameter = 25.3mm
26mm from skull back
Approximately 375mm
   from seat bottom

WASHER/SCREW
= 25.3mm diameter
= 26mm from seat back
= 375mm from bottom

Approximately 24"
to shift knob

Car & seat rotation

conducted an inspection of all vehicles involved. He discovered that the left rear quarter panel of the first car struck   had circular marks on it matching the radius of the tractor truck cab tires. This indicated that the cab was indeed involved in the accident.   concluded that the cab was moving from the left lane into the right lane and that the driver did not see   in the right lane due to the cab's blind spot. (See Graphic 1 on page 22). The cab bumped the   into a yawing skid across the median to impact a third vehicle driven by the plaintiff. The plaintiff's vehicle was then struck by a fourth vehicle, which killed the plaintiff upon impact. The animations were presented from numerous vantage points, each of which solidified the simple explanation. The animations were consistent with all physical evident and statements from the witnesses.
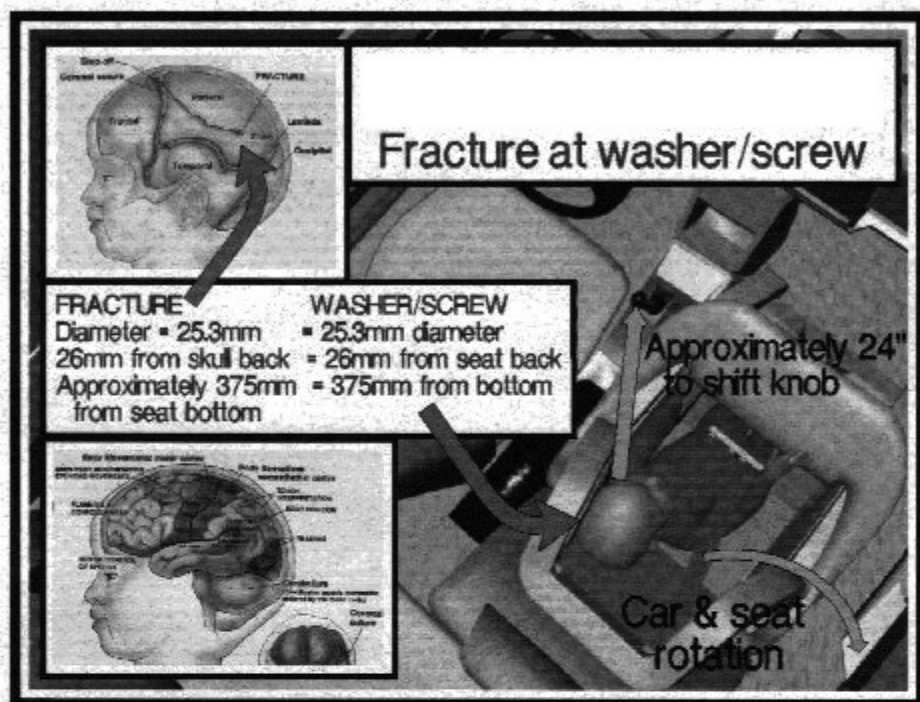
Without animation modeling, the timing interrelationships of the five vehicles would have been impossible to determine and extremely difficult to convey verbally to the jury. The opposing council, having viewed the animation, decided to settle before the animation was shown to the jury. After trial, the plaintiff's attorney,   stated that if it was not for the "...sterling investigation and fastidiousness with regard to this case['s animation preparation] the [plaintiff's] family... would not have been adequately compensated."

Case Theory Completion

One of animation's greatest benefits to attorneys is the by-product of comprehensive case theory completion, since all timings, speeds, skids, and impacts must be determined prior

to completing an animation. For complex cases, such as multiple vehicle collisions, the animation analysis process would be almost impossible to replicate with a calculator alone. Timing relationships of all objects becomes clear and witnesses can critique whether or not the scene corresponds to their memory. Additionally, animation helps find timing inconsistencies between witnesses for the expert to evaluate.

Case theory completion was critical in winning a product liability case involving a child safety seat. The defense expert theorized that the child's head injuries were caused by contact with either the gear shift knob or radio, rather than the recessed screw in the top of the child safety seat. Opposing counsel funded crash tests to support this theory, but these did not account for the vehicle's obvious spin.

To the contrary, animation of the vehicle spin in 1/48th increments clearly presented how the vehicle's spin slammed the child's safety seat, causing the recessed screw and washer to fracture the infant's skull, leaving permanent injury and handicaps. Further, at the time of the concussion, the skull fracture location exactly matched the child safety seat screw measurements, (see Graphic 2 on page 23) thus overcoming the opposing expert's incomplete theories. The plaintiff's expert,

provided the reconstruction

The plaintiff's attorney,

wrote: "The opponents . . . offered a substantial settlement as we were beginning to choose a jury. . . I believe that our video animation . . . substantially assisted me and finally my opponent in seeing that this was a case for which they should make a substantial offer in order to settle.

Often the completion of case theory reveals inaccurate data or conclusions regarding opposing counsel's theories. One of the numerous examples occurred during the 1992 case, Strock v. Southern Farm Bureau Insurance Co., a Hurricane Hugo damage case. The plaintiff's attorney, Steve Moskos from Charleston, SC, wrote that owing to the animation process, it was discovered " that the defendant's expert had misplaced one of the trees on the property. . . This additional mistake on behalf of one of their engineers may have been the reason that they did not call him at the end of the trial."
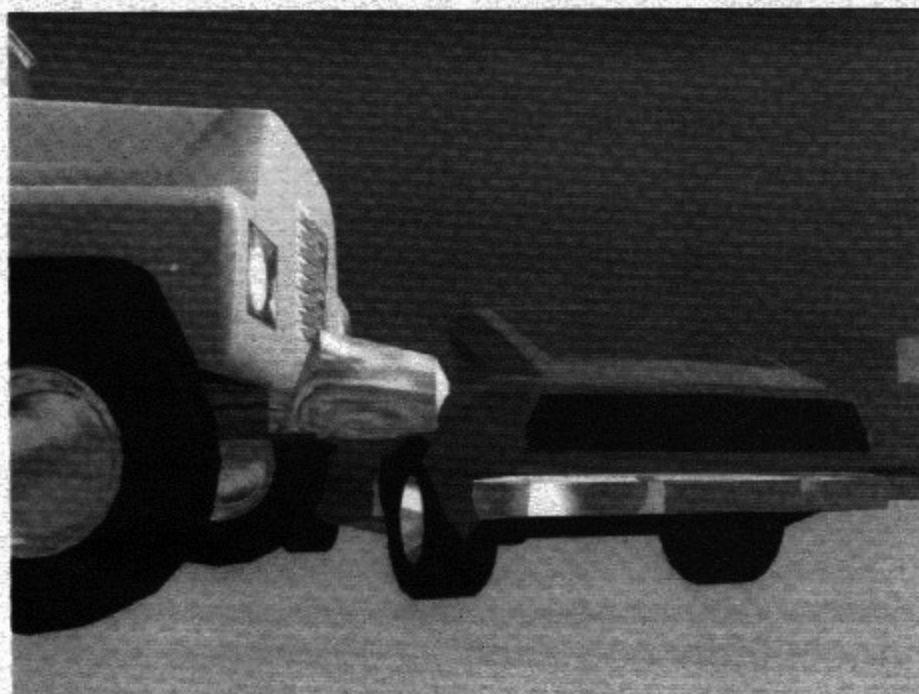
Expediting Settlements

Another huge benefit of animations is to facilitate early settlement and thereby reduce litigation costs, since the conclusions of case theory are clearly and completely presented in a rapid fashion.

Many of the cases which went to trial settled before a verdict. An increasing trend is to include animation as part of the initial settlement package request, even before a suit is filed, to illustrate a case's strength.

For example, in an early settlement case, the client was initially accused of running a red

light, traveling straight through an intersection, and into the path of a left crossing truck. To the contrary, the theory of the client's attorney was that was making a correct left turn when the truck ran the red light and struck him from the left, resulting in lifetime paraplegic injuries.

Although statements varied, most witnesses said ". . . shortly after the accident the traffic moved forward." This suggested a proper left turn, which was corroborated by an expert who researched the wiring of the signal lights. The conclusive evidence was proven by matching an exact computer model of the truck bumper and tires with an exact model of the car crush. (See Graphic 3). The truck bumper and car crush matched, indicating a 45 degree angle left turn. At that angle, the left front truck tire hit the left front car door, as evidenced by the tire's black smudge in the crushed car photos.

Plaintiff's attorney,

had asked for $1 million for the client. The opposing side refused to offer anything until a settlement conference two days before jury selection, when the animation was

shown. The result of this meeting was a very satisfactory confidential settlement, ending the case before trial.

Types of Cases Aided by Animation

Computer animations are valuable tools in presenting information to the jury in a wide variety of cases. Vehicle accidents comprised the majority of the cases studied, including complex multiple vehicle accidents, rollovers, whiplash injuries, night lighting, and obscured (rain/fog) visibility. The remainder included cases involving product liability, fire, construction, patent infringement, nautical, railroad, flood, and soil strata de-watering.

Animations Meet Demonstrative Evidence Requirements

Effective visual animation proves to be very useful for attorneys and judges alike. In my experience, judges are increasingly encouraging animations to facilitate pretrial settlement or to demonstrate information to jurors. A South Carolina Federal District Judge G. Ross Anderson, Jr. presented a 20 page paper entitled *Computer Animation: Admissibility and Uses"* as part of a SC County CLE program. An excerpt from his paper follows:

"Admissibility as demonstrative evidence requires the animation to be sufficiently illustrative of relevant testimony to be of potential help to the trier of fact. Its purpose is to clarify testimony to the trier of fact...

To establish a foundation for the admission of a computer animation as a demonstrative exhibit, the proponent must show that:

1. The exhibit relates to other relevant, competent, and material testimony, documentary, or real evidence.
2. The witness whose testimony the demonstrative exhibit illustrates is familiar with the exhibit.
3. The demonstrative exhibit fairly and accurately reflects the other evidence to which it relates; and
4. The demonstrative evidence will aid the trier of fact in understanding the related evidence."

In admitting a computer animation into evidence during a ▓ accident case, Judge Anderson stated in his pretrial order: "...the computer animation would show, in approximately two minutes, the plaintiff's entire theory of the case and the testimony of the expert, along with that of the numerous other eye witnesses which would otherwise probably take two days of trial time."[3] Judge Anderson in his CLE presentation cited above emphasized the following benefits of animation:

"Computer animation allows attorney to convert witnesses' verbal testimony into dynamic, visual demonstrations capable of mentally transporting jurors to the scene. It is difficult to imagine a more effective tool for enhancing a case presentation." ■

Footnotes:

[1] Roy Krieger, *Sophisticated Computer Graphics Come of Age - Evidence Will Never Be the Same,* ABA Journal, December 1992.

[2] Vogel, Disckson & Lehman, Persuasion and the Role of Visual Presentation Support: The UM/3M Study, Management Information Systems Center, School of Management, University of Minnesota.

[3] Lollis v. McAvoy, Civil Case No. 92-1465 (Dist. S.C. 1993).

Scott J. Taylor, CDP: in 1993 pioneered the first animation admitted in a South Carolina court. His papers have been presented to the Advanced Trial Lawyers Association CLE program in Keystone, Colorado, as well as to the South Carolina Annual State Bar Meeting CLE program. Mr. Taylor has funded and taught numerous CLE programs regarding trial animations for attorneys at state, county and firm presentations. He has been qualified as an expert witness in federal, state, magistrate and criminal courts. Mr. Taylor may be contacted in Greenville, SC, at TETRA, Inc. (864) 288-1961.