

Client Alert

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Fast Forward Into the Future

By DENNIS DONNELLY

Even 10 years ago, before most of us were wired to computer screens at work and home, a leading New Jersey case on demonstrative evidence recognized the basic bottom line: "A picture is worth a thousand words." *Travers v Packaging Industries Group, Inc.* 242 N.J. Super. (Law. Div. 1992). People, which in our business means juries, can better understand and accept what they see. Now more than ever, fast forwarded as we all are into the future, that requires lawyers to get with the program. And the program is technological display of *the* visceral facts that make our case and break their defense.

Of course, all this adds yet another layer of trial preparation for lawyers, but there is no other choice. At Blume Goldfaden this has led to several changes. In complex cases, we now often take videotaped depositions of key defense witnesses. We also have in-house video teleconferencing so we can take video depositions of distant witnesses without incurring the additional cost of traveling. Both those techniques allow later display of visual clips of helpful admissions or concessions at trial.

In many trials, in addition to traditional visual blow ups, we have a computer simulation or a PowerPoint® display projected from a laptop computer. This creates several complimentary visuals to reinforce our strong points and the opposition's weak points. We have our own computer-video projector and screen to facilitate trial presentations. This allows us to create low tech blow ups and paper charts for one generation of jurors, while at the same time providing high tech displays for generation xers.

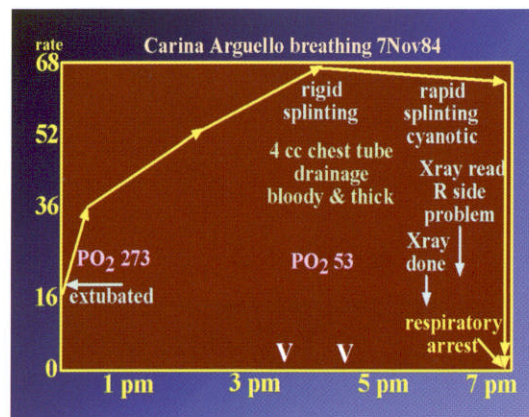
Two examples—from the many each lawyer here could give—illustrate how our technology helps us better present complex cases. In a recent medical negligence case, my expert prepared computer generated graphs of the abnormal respiration rates and blood rates that illustrated why the doctors should have acted sooner to reverse respiratory distress. Those charts and other scanned medical records were then used again in a PowerPoint display during summation. The result was a \$5 million jury verdict. In a recent bus accident case, aerial photographs, video depo-

sitions, and expert diagrams were all projected many times during the trial to illustrate the bus driver's excessive speed and recklessness. The same material was again visually summed up in a PowerPoint display. The result was a \$1.25 million verdict.

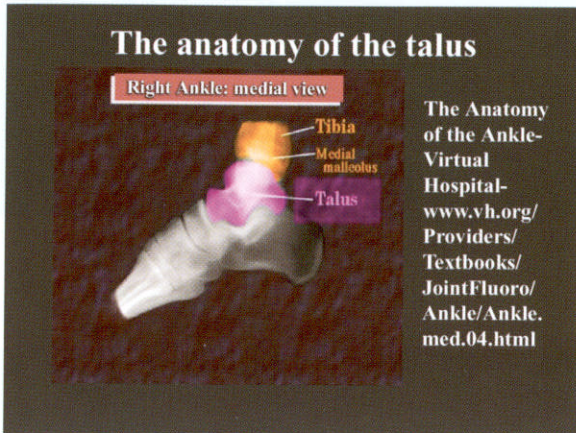
Our lawyers remain directors and must be the ones who choose which pages among thousands visually tell the story we need to tell and make the point we need to drive home. However, we have developed our own computer resources and personnel to allow us to best present any complex case that might be referred to us.

Writing with papyrus, more than 2,350 years ago, Aristotle recognized the analytical impact all demonstrative display aspires to: "We are more fully persuaded if we consider a thing to have been demonstrated." Aristotle, *Rhetoric*. Writing more than 150 years ago, Victor Hugo recognized the additional emotional dividend from demonstrative evidence: "He does not weep who does not see." Victor Hugo, *Les Miserables*.

In 2003, with everyone used to getting their news immediately from television and computer screens, those universal statements are truer than ever. That is why we have invested in the equipment and manpower necessary to visually and, therefore, persuasively display complex case issues. ♦



This is a generic example of how medical illustrations off the web can be used to make damages real for jury/judge/arbitrator. Use of this image resulted in maximum arbitrator award of full coverage of \$300 thousand in auto injury case involving talar fracture



Here, 2 slides in Truchan illustrate dangers in old car design with lap belt only seat belt in rear, that causes worse injury after crash.

Government crash tests show the injury-sparing difference a shoulder belt makes: NHTSA - 1988 35 M.P.H. frontal barrier impact test

Maximum Force-Seat Belt Loads (LBS)

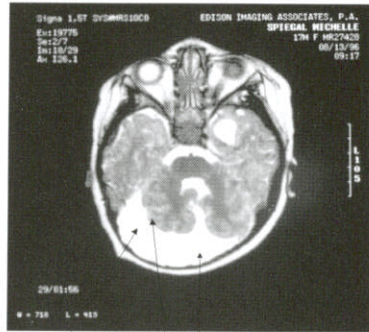
| | Shoulder Strap Upper Belt Load | Lap Strap Right Belt Load | Lap Strap Left Belt Load |
|-----------|--------------------------------|---------------------------|--------------------------|
| Driver | 1753 | | 1325 |
| Passenger | 1802 | 1429 | |

NHTSA-1988
NCAP-Frontal Barrier Impact Test
page 3-2

- A crash test with three-point belted dummies in the front seat proved that a passenger's shoulder strap safely rides down 1,802 pounds of force which would otherwise catastrophically jackknife the passenger's upper body over the lap belt without any protection.

In the image above, Truchan uses government crash tests of how much force is absorbed from shoulder belt in later models and extrapolates. This is what the unprotected stomach takes as it rides over the lap belt only.

M. S's brain has several "abnormalities" that should have been recognized as requiring a sub-specialist ultrasound that then would have diagnosed profound irreversible prenatal brain damage in the second trimester



Mega cisterna magna, asymmetrical, splayed, cerebellar hemispheres and partial absence of vermis

This example shows use of a post birth MRI to prove pre-birth negligent failure to make diagnosis of profound birth defect. The result was a \$1.4 million settlement of wrongful birth case

In the image below, Truchan takes safety literature examples and puts them in slide to show manufacturer and industry knew of this risk, but still ignored it. Result here was \$1.4 million settlement at arbitration.

Medical literature had illustrated the mechanism of jackknifing and submarining injuries caused by lapbelts for 20 years prior to 1988.

Hyperextension of the Neck

Schneider et al, Lap Seatbelt Injuries: The Treatment of the Fortunate Survivor, Michigan Medicine, Feb 1968

Mechanism of Spinal Fracture

Gumler et al, Distraction Fractures of the Lumbar Spine, The Journal of Bone and Joint Surgery, Vol. 64, No. 5, 1982.

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