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LAW BULLETIN MEDIA

## Computer-generated evidence can improve your trial game

In a typical case, a lawyer spends two to three years meticulously preparing for trial. A critical part of trial preparation is visual strategy. Studies have confirmed that most people are visual learners and that a person's memory and comprehension is significantly improved by seeing evidence while simultaneously hearing about it.

The use of computer-generated evidence (CGE) in the courtroom provides litigators the opportunity to make the trial process more efficient and impactful for the jury. CGE can be used effectively in complex mediations or arbitrations as well. CGE slide shows are more efficient than written documents or lengthy deposition transcripts at effectively summarizing a case for review.

Much of today's litigation involves complex technical issues. CGE technology can be especially effective at visually depicting these complexities, allowing the jury to have a broader understanding of the case and the issues they are asked to decide.

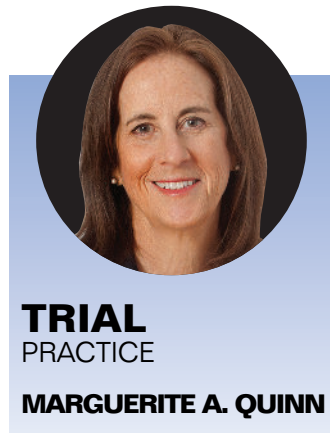
When deciding to use CGE, lawyers should carefully consider the following questions: Which type would best fit the job? Does its use enhance a witness' testimony? Can it meet the evidentiary requirements?

Demonstrative evidence is evidence that is not the

actual piece of evidence, but a representation or depiction of the actual evidence. It is used as a visual aid to assist the jury in comprehending the testimony of a witness. *Cisarik v. Palos Community Hospital*, 144 Ill. 2d 339 (1991).

Common forms of CGE are animations and simulations. Both are reconstructed images of what happened according to witness recollection (animations) or according to input data (simulations). The use of demonstrative evidence is looked upon favorably by the courts because it allows the trier of fact to have the best possible understanding of the matters before it. *Sbarbono v. Hilborn*, 2014 IL App (3d) 120597.

A proper foundation must be laid before any demonstrative evidence can be admitted and published to the jury. The primary considerations in determining the admission of demonstrative evidence are relevancy and fairness. See Illinois Rules of Evidence 401, 402 and 403. When an animation is offered to illustrate the testimony of an eyewitness, the witness can provide both authentication and relevance for purposes of admissibility. Reliability of the evidence depends on the credibility of the eyewitness' testimony and is subject to



### TRIAL PRACTICE

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cross-examination.

The foundational requirements for admission of CGE as demonstrative evidence are:

1. Whether a witness has personal knowledge of the subject.
2. Whether the exhibit fairly and accurately reflects admissible substantive evidence that is relevant to the case in question.
3. Whether the exhibit would assist the jury's understanding of witness testimony or aid in understanding trial issues.

Demonstrative evidence may still be excluded by the trial court if the animation's probative value is substantially outweighed by the danger of unfair prejudice. *Cisarik v. Palos Community Hospital*, 144 Ill. 2d 339 (1991).

Laying a proper foundation for the admission of a computer-generated simulation or re-creation is more complicated. Simulations involve the input of data into a computer model, which then analyzes this data to draw conclusions. When the exhibit is being presented as an illustrative aid to the expert's testimony, it would not be subject to the same level of scrutiny as if it were presented as substantive evidence. The demonstrative exhibit must rely on something that can be tested. The relevancy link is established through evidence other than eyewitness testimony. The proponent of a computer-generated simulation should establish:

1. The expert witness is qualified as an expert in the applicable field of expertise.
2. The origin and integrity of the data used by the expert to create the simulation.
3. The software used is based on established scientific methodology.
4. The simulation accurately reflects how the event occurred.

5. The input information is substantially similar to what created the actual event.

6. It will assist the jury in understanding the testimony.

A computer-generated simulation is subject to disclosure 60 days before trial. See Illinois Supreme Court Rule 218. The reliability of the exhibit can be tested

prior to trial and, if accurate, can provide sufficient authentication. The trial judge has broad discretion regarding the admissibility of computer-generated evidence and its ruling will not be disturbed on appeal absent a clear abuse of discretion. *Spyrka v. County of Cook*, 366 Ill. App. 3d 156

(1st Dist. 2006).

Computer-generated evidentiary tools can be used by both sides to establish or refute evidence presented to jurors at trial. Studies have shown visual aids have a direct effect on a person's ability to recall important facts and more fully comprehend the issues they are

asked to decide. The use of CGE depends on a lawyer's careful consideration regarding the facts of the case and the applicable evidentiary requirements. These guidelines will help facilitate the successful use of these persuasive visual tools, which is key for both admissibility and effectiveness at trial.