

A Picture Is Worth A Thousand Words Of Testimony

Someone Else Is Always At Fault

Colorful New York sportscaster Warner Wolf peppers his evening news segments with dramatic highlight replays, prefaced with his signature lead-in, "Let's go to the videotape." Wolf and his viewers appreciate that visual representations can be far more powerful and entertaining than narratives alone.

The power of the picture to convey information effectively and engagingly has also been recognized by litigants and courts. However, a party offering such evidence must first demonstrate that the depiction is accurate and appropriate.

This issue was discussed in the old car context in *Lally vs. Volkswagen Aktiengesellschaft*, decided August 18, 1998 by the Appeals Court of Massachusetts. (On October 23, 1998, the Supreme Judicial Court of Massachusetts denied further appeal.)

According to the Court, on a June evening, Joyce Lally was driving a 1971 Karmann Ghia in West Springfield. Lally's husband and the couple's six-month old child, George, were passengers. Although the vehicle was equipped with seat belts, neither adult wore one. George, however, was strapped into a car seat in the rear of the vehicle. Shortly before the vehicle entered the intersection of Route 20 and Sibley Avenue, Mr. Lally removed the baby from his car seat and brought him into the front where he was held "chest to chest." As the Karmann Ghia crossed the westbound lane of Route 20 before turning into the eastbound lane, it was struck on the driver's side by a 1974 Oldsmobile Cutlass. George and Joyce suffered severe injuries.

The family brought a product liability lawsuit against the manufacturer and others. In this "crashworthiness" case, the plaintiffs alleged that as a result of design defects in the Volkswagen, Joyce and George were more seriously injured than they otherwise would have been. Specifically, the plaintiffs claimed that the glove box door in the Karmann Ghia opened in the course of the accident, that George moved forward into the open door, and that the impact with the door's narrow edge caused his paralyzing spinal injuries. They also alleged that Joyce's head struck the A-pillar and that her brain injury was caused and worsened by the lack of padding on the A-pillar.

The judge ruled for the defendants on many of the Lallys' claims. The jury then found for the defendants on some remaining claims, but for the plaintiffs on others. The judge thereafter entered judgment for the defendants on all claims. The Lallys appealed, raising issues including the court's admission of visual evidence offered by the defendants.

The appellate court affirmed the rulings below. "The first videotape introduced through McHenry, an engineer who performed a complete accident reconstruction for the defense, demonstrated the use of computers to predict and reconstruct accidents, and included a brief movie excerpt of a complex automobile stunt accomplished with the assistance of computers. Contrary to the plaintiffs' assertion that the tape was prejudicial to their case because it somehow suggested that 'Hollywood is in use to fix the gouge mark and the point of impact,' we agree with the judge's conclusion that the film likely assisted the jury in understanding the very technical nature of [McHenry's] testimony."

The appellate court also upheld the admission of a videotaped sled test during the testimony of the safety engineer who conducted it at Volkswagen's testing facility in Germany. "During the test, a modified exemplar of the Karmann Ghia containing anthropomorphic dummies, was mounted on a sled which was then suddenly accelerated and decelerated to simulate certain accident conditions...In determining whether a test such as the one at issue is admissible, a trial court must consider 'whether the evidence is relevant, the extent to which the test conditions are similar to the circumstances surrounding the accident, and whether the [experiment, demonstration, or reenactment] will confuse or mislead the jury.'"

"The sled test was offered by the defense to demonstrate two things: the real time movement of the occupants in the crash, and the components with which they would likely have come into contact if the vehicle moved at a 53-degree angle, as calculated by McHenry. The resulting damage to the exemplar vehicle's interior, such as deformation of the steering wheel and gear shift, could then be compared to the damage actually seen in the plaintiffs' Karmann Ghia. In these circumstances, 'the relevancy of the [test] to [the] defendant[s]' theory of causation can [hardly] be disputed.' While the test did not replicate the conditions of the accident exactly, it was similar enough to allow the jury to infer...how the occupants would have moved inside the vehicle and what parts of the interior they would likely have struck if they moved in the direction posited by the defendants' experts. Finally, where, as here, the differences between the sled test and the actual accident...are obvious, there is little danger that the jury could have been misled or confused."



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