

Courtroom Electronic Trial Presentation Helps Win Largest Jury Verdict in Connecticut History

As their court date rapidly approached, Attorney Lawrence Rosenthal, and his associate, Fletcher Thomson, of the Hartford, CT law firm Rogan Nassau, LLC, struggled with whether they should develop an electronic trial presentation using one of their in-house paralegals or whether they should hire someone from the outside.

Rosenthal wanted something that would keep the interest of the jury for the upcoming trade secret case, *Dur-A-Flex, Inc. vs. Laticrete International*. *Dur-A-Flex*, an East Hartford, CT-based flooring solutions company, was suing *Laticrete* for allegedly stealing its trade secret for coloring sand. *Laticrete*, a former purchaser of *Dur-A-Flex's* colored sand, was also *Dur-A-Flex's* only customer for the product. At some point, *Laticrete* began making an identical colored sand product.

"We knew we needed some type of presentation for the trial," said Rosenthal, "as trade secret law isn't exactly *Law and Order*. It's boring, dry, and technical. I hadn't seen a trial presentation used in a jury trial before but I knew it existed."

Evidence presented dynamically vs. static overheads

Presenting evidence at trials is not new. In the days before the Internet, lawyers routinely presented paper-based documents and photographs using the technology available at the time: overhead projectors. With the advent of computers and database programs, lawyers could present evidence via

Microsoft® PowerPoint® and other software. Like their overhead projector cousins, these presentations were generally static and simply presented evidence projected onto a big screen.

The advance of technology, however, has made presenting electronic evidence, such as video, much easier. Because depositions are now routinely videotaped, for example, a trial lawyer can easily incorporate a taped interview into the trial to prove that a key witness is lying.

Trial presentation specialists can build large databases consisting of thousands of pieces of evidence, access any exhibit, video, reference, or document by keyword from the database, and then instantly present it on the screen for the jury to see. "A light show keeps the jury's interest," says Rosenthal. "It's a great asset because when you present a document, you don't want the jury looking at the document, you want them looking at the witness. And, while a trial is about the law and justice, it's also about theater. You want to give juries 30-second visual sound bites."

Rosenthal had already decided to present evidence electronically via a document camera (or overhead projector). Thomson, however, advocated for a more sophisticated, interactive presentation that incorporated video, highlighted paragraphs, and demonstrative evidence, and recommended Marie Mullaney, President of Litigation Solutions, LLC, based on his work with Litigations Solutions at a prior firm. After receiving a call late Thursday afternoon and

meeting with the pair Friday morning, assembling the evidence database for the trial – which was to begin the following Tuesday morning in the Waterbury, CT superior court complex litigation docket.

“Fletcher is a true marvel,” says Mullaney. “He had already single-handedly structured all the evidence in an easily retrievable fashion, which made it very easy to help them on such a tight deadline.”

Knowledge of trials and communication key factors to success

“**W**hen we called Marie, we already had years invested in this case,” says Thomson. “Marie came in with the outside perspective of how trial evidence would be perceived by the jury. We lacked this perspective because we were too close to the case.”

According to Rosenthal, Mullaney’s strength was in seamlessly presenting evidence on the fly. Because he had taped depositions of defense witnesses, he was able to refer to them during cross-examination. “Marie was really good at pulling up a video deposition and as the clip ran, the jury would also see a scroll of the words being spoken,” says Rosenthal. Mullaney also synced pages, comments, and video together into vignettes so that it looked as if the witness was actually testifying from the bench. “The vignette wasn’t filled with glitchy stops and starts,” says Rosenthal. “It was seamless – and very impressive.” Says Thomson, “As Larry talked, the appropriate document would pop up on

Mullaney got the go-ahead to begin the screen and then she would pull out the right sections. It was very powerful.”

As Rosenthal talked, he would refer to an exhibit by number, e.g., Exhibit #235, and then by page and paragraph. Mullaney would instantly call the exhibit to the screen and highlight the referenced paragraph in larger type. Says Rosenthal, “This coordination did require that Marie and I communicate. I had to be clear which exhibit I needed and when I wanted it to appear, I would give her a high sign.”

“Coordinating with a lawyer in a case like this is key,” says Mullaney. “A good trial presentation specialist needs to know all of the trial components, understand litigation, discovery, rules of the trial, and the relevance of evidence. Because of your role, you become a key player on the legal team – and your work can make or break a trial, so the lawyer has to trust you implicitly. The Dur-A-Flex legal team consisted of Larry as the lead lawyer. Fletcher, his associate, was second chair, doing everything both an associate and a litigation paralegal would do, including the legal research and coordinating the witnesses. I ran the presentations, listened carefully and recommended to both of them how they could best present evidence digitally, and worked with them to keep close track of the trial records.”

In addition, Mullaney had two other previously scheduled trials in progress during the eight-week Dur-A-Flex trial. Instead of leaving Rosenthal and Thomson to fend for

themselves, she had her staff smoothly take over during her absences.

“One of the best closing arguments of my career”

While presenting evidence digitally was an important part of the trial, a key element to winning the case was Rosenthal’s closing argument, which was augmented by a digital presentation – a tactic suggested by Mullaney based on her work with other firms.

“We spent the entire Mother’s Day weekend putting together new graphics to get our idea across, developing the story line in terms of which exhibits to show and which order to show them,” says Rosenthal. “Marie suggested all kinds of ideas on how to present the evidence – she was invaluable.”

Because of the tight deadline, Rosenthal didn’t have time to do a dress rehearsal and requested that the closing argument presentation run approximately 1 hour and 15 minutes. Litigation Solutions delivered a book to Rosenthal late Sunday night that included pictures of each exhibit in the presentation as well as his talking points.

“As I gave my closing argument,” reports Rosenthal, “the presentation ran beside me on the screen so that the jury could see it while I talked. When I referred to a piece of evidence or testimony, up would come that clip – which kept me focused on exactly what I wanted to say. I would say something like, ‘Remember, the contract said this,’ and up would come the contract with the language in big letters and highlighted in yellow. It was

very, very powerful and helped us as prove beyond a reasonable doubt that Laticrete stole the trade secret. On top of that, the presentation ran 1 hour and 17 minutes – you just can’t get any better than that.

In Connecticut trials, the Plaintiff goes first, then the Defendant, and then the Plaintiff gets a rebuttal. The Dur-A-Flex team didn’t know what Laticrete would say during their closing argument but over the weekend Marie helped them put together slides and graphics that could be adapted on the fly. “We took notes as the Defendant talked,” says Thomson, “and then when Larry got up to give his rebuttal, Marie had a whole new presentation ready to go that addressed specific issues. Marie’s ability to be this nimble was simply incredible.”

Rosenthal sums it up the experience in one sentence: “It was one of the best closing arguments of my career.”

The jury awarded Dur-A-Flex \$43.7 million in damages for the misuse of its trade secrets by Laticrete International, and the court subsequently entered judgment for \$50.5 million. The verdict is the largest jury verdict in Connecticut history.

“Both sides were equally matched,” says Mullaney, “but the other side presented evidence via a document camera, which paled next to Larry’s dynamic presentation of evidence. The day the verdict was awarded, the other firm asked for my card.”

Firm: Rogan Nassau, LLC, Attorneys at Law

Practice Area: Business, Corporate and Commercial Law

Problem: Developing an electronic trial presentation for a trade secret case that would keep the jury's interest while portraying an intricate set of facts and circumstances.

Implementation: Consolidate all evidence into database three days before the trial and then seamlessly call it up on the fly during the eight-week trial.

Results: Digital presentation of hundreds of exhibits in varying formats by Litigation Solutions, LLC key in helping Rogin Nassau win the largest jury verdict in Connecticut history.
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