



How a Systech visualisation can bring claims and dispute resolution success



Introduction

Systech is a leading global construction consultancy with a 25 year history during which our consultants have worked on thousands of claims and disputes, including hundreds of arbitrations.

Claims and disputes typically cover complex issues and we have therefore developed an in-house visualisation service which uses computer generated graphics and games technology to create high impact video, animations and augmented reality tools which support the communication of key, and typically complex, arguments.

Systech has successfully used visualisation as a factual illustration of the problems and difficulties encountered on a project to assist in the resolution of disputes prior to their crystallization, therefore saving time and reducing costs...and conflict. We have also prepared visualisations to support expert testimony and to assist the tribunal in determining its award.

Why visualisations are successful

“A picture paints a thousand words” is a common expression which captures why visualisations are such a success, however this truism is also supported by academic research. Much research has been carried out on the visual memory and how cognitive recognition is superior to verbal and written information. One study showed that humans retain 87% of information presented visually but only 10% of that presented orally. In another study, it was shown that jurors information retention was 650% higher for animated evidence as opposed to more traditional methods.

Visualisations have been shown to provide positive advantages that support the tabling of evidence, namely:

- Effective means of conveying complex information due to strength of visual memory
- Increased attention span
- More persuasive
- Evidence can be shown interactively allowing a more dynamic presentation which can follow and react to proceedings
- Greater efficiency and saving of time as complex arguments can be understood more quickly

These benefits explain why we recommend our clients use a visualisation as part of their claims and disputes strategy.



What is the view of the Courts and other Tribunal?

The use of computer simulations has been used in the High Court of England and Wales. In **Owners of the Pelopidas v Owners of the TRSL Concord [1999] 2 Lloyd's Rep 675**, a case involving the collision at sea of ships, the court stated amongst other things that:

"I am anxious to stress this point because there is a danger of losing sight of the true value of reconstructions. Of course they enable the Court and the parties to have a broad bird's eye view of the events leading up to the collision. But their true probative value is that they may sometimes enable the Court to determine, not what may have happened, but could not possibly have happened."

Similar examples of the use of computer animations and simulations can also be found in **Maersk Oil UK Ltd v Dresser-Rand (UK) Ltd [2007] EWHC 752 (TCC)** and **Halliburton Energy Services Inc. v Smith International (North Sea) Ltd [2006] EWCA Civ 1715**.

The use of computer generated evidence has also been used in criminal proceedings within the United Kingdom, America, Australia and New Zealand.

A further viewpoint was obtained by research carried out by Loughborough University in the UK in 2015, entitled "Interactive Exhibit to Assist with Understanding Project Delays" which aimed to:

- Assist with the proactive management of delays
- Improve the presentation of delay claim information

A key part of the research was a workshop attended by 50 adjudicators from the Royal Institution of Chartered Surveyors (RICS) Adjudication Panel (half of the total registered).

During the workshop the delegates were asked a series of structured questions in relation to computer generated evidence (CGE). Despite CGE being a relatively recent technology, 44% of the delegates had been provided with a visualisation to support a claim and had found it useful in assisting with their award. In addition, the workshop came up with a series of recommendations for the content and structure of visualisations; these are covered later in this note.

Using visualisations for international arbitration

Arbitrations are confidential so there is no explicit mention on the use of visualisations during proceedings as shown by the examples below taken from the institutional rules for powers and evidence.

ICC

The tribunal (and the parties) must make every effort to conduct the arbitration in an expeditious and cost-effective manner, having due regard to the complexity and value of the dispute (Article 22.1)

There are no prescribed rules of evidence

UNCITRAL

The tribunal may conduct the arbitration as it considers appropriate, provided parties are treated equally and have full opportunity to present their case. The tribunal will conduct the proceedings so as to avoid unnecessary delay and expense (Article 17.1)

The tribunal will determine the admissibility, relevance, materiality and weight of evidence (Article 27.4)

Indeed it can be contended that the use of a visualisation is consistent with the open approach to evidence and the time and cost saving benefits.

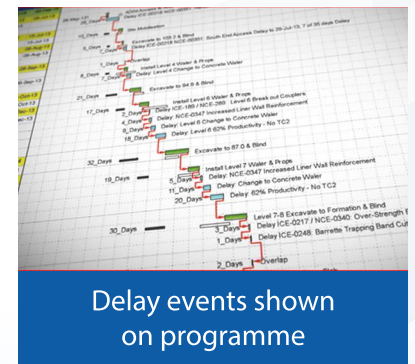
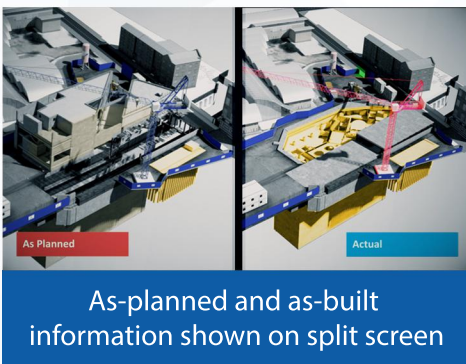
It is generally left to the tribunal to determine what is admissible but the underlying intent is to allow the parties to deliver their case in the format they feel best, provided always that the evidence is relevant, material to the case and stands up to hearsay rules.

If visualisation is used, it needs to be supported by primary evidence, have a clear audit trail and be accurate. In the spirit of fairness, it is also necessary to give the opposing party the opportunity to respond to and comment on the visualisation.

Our approach

Our approach and strategy in relation to the use of visualisations for arbitrations recognises the above institutional rules and guidance. The strength of our approach is further reinforced by us adopting the following advice and principles when preparing a visualisation:

- Case law for the authenticity of visualisations (State of Connecticut v Alfred Swinton [2004] SC 16548). This case provided specific advice for parties wishing to use a visualisation:
 - › The use of standard computer equipment in good working order
 - › Qualified computer operators
 - › Proper procedures followed for the input and output of information
 - › A reliable software programme
 - › IT equipment programed and operated correctly
 - › The visualisation is properly identified and linked to the evidence
- Recommendations for visualisation content and structure given by the 50 adjudicators attending the RICS workshop:
 - › An introduction including background information on the issues covered by the visualisation and how it can be used
 - › An aural soundtrack
 - › As-planned and as-built information shown on split screen
 - › A timeline which progresses throughout the visualisation
 - › Colour coding of events and issues
 - › Delay events shown on programme
 - › Clickable tags at key points which pause the visualisation to show a box with further relevant information such as photos, video, text
 - › A summary



- Our visualisation team is integral within the business and works closely with our claims, dispute resolution, expert and legal consultants to offer a co-ordinated service with the visualisers and professional consultants understanding how each other work. In addition, our Head of Visualisation is a trained expert who can join with our quantum and delay analysis experts for cross-examination
- Our experts introduce their evidence, including the supporting visualisation, at the preliminary stage of the hearing to allow the tribunal to decide on whether they embrace the issues to be decided
- The source visualisation file is shared with the tribunal as well as the other party to provide them with the opportunity to raise questions and undertake their own analysis. The visualisation will not therefore be used as an “ambush tactic”

Based on the above principles, we ensure that the following steps are taken when preparing and using a visualisation:

- The visualisation does not present any new information but accurately reflects the evidence being advanced and is cross referenced to the expert evidence, witness statements, statement of case or is based upon agreed facts between the parties
- The tribunal is clear and persuaded that the visualisation does not present any new information but is an accurate reflection of the evidence being advanced
- The other party or parties in the dispute are clear and persuaded likewise
- The visualisation is based on existing information such as contemporaneous records, as-built programme, drawings, diagrams, notices, instructions and specification
- The visualisation is contractually correct

Conclusion

Systech is an industry leader in the use of visualisations to support its clients secure claim entitlements and dispute resolution awards. The use of visualisations offers positive benefits over more traditional forms of information transfer and evidential presentation. We have successfully used visualisations to assist in the resolution of disputes prior to their crystallisation therefore saving time and reducing costs...and conflict.

These outcomes are also consistent with the aims and ethos of arbitration and, by following case law and research recommendations combined with our professional and open approach, our visualisations make a positive contribution to the process whilst enabling us to strongly defend any non-admissibility arguments by the opposing party.

Visualisations are innovative and therefore, for some, will be an unfamiliar tool. However, with the increasing use of technology in industry, the courts and tribunals, combined with advances in methods of communication, they will soon become the norm.

Do not be a follower...use a Systech visualisation and be at the forefront of this exciting and successful new technology.

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