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Maximizing general damages with visual components

Visuals such as "Day-in-the-Life" powerfully communicate the value of your case, especially when the client has reached maximum medical improvement

By Bobby Saadian

I firmly believe in the power of visual components to prove physical pain, mental suffering, and emotional distress. Medical invoices are boring; surgical reports are too complex. As humans, we are designed to value things according to how we perceive them visually. Creating settlement videos or authentic animated visuals of your client's injuries and disabilities conjures a visceral reaction within the jury and sends shock waves through the Defense.

Visuals, such as "Day-in-the-Life" or settlement videos, accident re-creation animations, medical illustrations of your client's injuries and surgical interventions are gamechangers. The visual components help communicate the value of your case to defense attorneys, adjusters, and the jury, allowing them to better understand, retain, and digest information. They send a loud and clear message: Our plaintiffs are ready to fight, and it is time for the Defense to pay.

At my firm, we gather data for our settlement videos early. Capturing our clients' injuries on video while they are still fresh diminishes most defense attorneys' fabricated arguments in their effort to delay, deny, and devalue our cases, especially after clients have reached maximum medical improvements by the time of mediation or trial.

Walking side by side with our clients in pursuit of justice

To create these videos, we walk side by side with our clients in their recovery journey and their pursuit of justice. What does it mean? I want to share the story of Rosibeth Cuevas, a lady for whom my firm obtained a substantial settlement over a decade ago. The story of Rosibeth demonstrates how the use of visual aids dramatically changes the landscape when we talk about maximizing pain-and-suffering damages.

It was late April 2014 when seventeen-year-old Rosibeth, a senior in high school, came into my office with her mother. Rosibeth was vulnerable, distressed, and depressed. Her tone was monotonous. Her gaze confessed emotions of anxiety and worry. Stitches laced her face. Missing teeth suppressed her smile. Her body was achy and sore everywhere. When I heard her story, I understood why her spirits were so sunken. Rosibeth had just been involved in a fiery, catastrophic motor-vehicle collision on her way to Humboldt State University (now Cal Poly Humboldt) to tour its campus. What was supposed to be a day of excitement and fun-filled curiosity for Rosibeth turned out to be a harrowing, near-death experience.

The collision occurred on the I-5 freeway in northern California. A large truck hauling two containers suddenly

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crossed the median and collided head-on with the charter bus transporting Rosibeth and other highschoolers to Arcata, home to Humboldt State University. At impact, both vehicles erupted in gigantic flames, trapping Rosibeth and other passengers inside the burning vehicle. She narrowly escaped through a small rear window, but, tragically that day, 10 people died – five of whom were teenagers. The tears were rolling down her cheeks as she spoke about this horrific tragedy.

My heart hurt as I listened to her. I knew I had to help her. She needed to be heard, valued, and supported. Rosibeth was anxious; she was unaware of the extent of her bodily injuries – all she knew was that her back, arms, and legs were sore. Prior to her tragic accident, Rosibeth was pursuing her lifelong dream, which was to become the first person in her family to graduate from college. Raised by a single mother with limited means, Rosibeth exuded pride and determination, ensuring the tragedy that made all those tears fall down her cheeks that day in my office, would not define her destiny. She knew that it was not her circumstance that defined her but, rather, how she reacted to it.

After listening to the multitude of pain symptoms Rosibeth was dealing with, it was clear that she needed to see medical professionals. I told Rosibeth that it was important to focus on her health and medical treatment so that she could have the best chance at continuing onward with her life, even if it meant deferring her college education, which I knew was going to be extremely difficult for her to hear. Her dream was so strong.

I decided to share parts of my own personal story with her, which is never easy and always brings up certain emotions for me. I knew I had to open up about my own pain, because I fundamentally know what pain and suffering means – to my core and in my soul. When I was a child, I saw how hard and determined my father worked towards his own dreams. My father studied for, and passed his California Medical Board's examination on his first try even though the exam was written in English, a language which he was learning at the time. The reason he succeeded on the exam was because of his determination, effort, and the time he was able to devote to mastery of the subject matter, every single day. Watching his hard work is what made me understand the value of education and tenacity. I wanted Rosibeth to have this same opportunity to devote herself completely to her studies, so that she could have the best chance of finding success.

She could only do that once the essential part of her treatment was completed. If she was to start school, she inevitably would have to manage her studies along with her efforts to recover from her injuries. Her family, community, and physicians were all in Southern California. With multiple appointments each week, it would have been impossible for her to commute between Southern and Northern California multiple times a month, focus on school, and have even a modicum of the life a college student is supposed to have. Realistically, everything she needed was in Southern California. If she focused on her health, everything else would follow.

As it turned out, Rosibeth was diagnosed with severe, physical injuries in her spine, legs, and arms, requiring spine and knee surgeries. She had a large cast for her arm and another for her leg. She focused on her treatment throughout the summer and fall of 2014, and then began her college education in January 2015, still navigating a life with physical and emotional scars from her tragic accident.

When mediation came, we were ready with our visuals that focused on Rosibeth's hardships — completing daily living activities, the re-enaction of the accident, and the illustrations of her medical procedures. The defense knew we were prepared and that we would produce an even better video, if necessary, at trial. More importantly, during settlement negotiations, our first concern was neither the cost of the videos nor the amount our firm would make with her case; we put Rosibeth first. Our only goal was to secure a future for her that was free from worry about the costs of necessary medical care.

I am happy to say that my firm's dedication inspired Rosibeth. After graduating college, she wanted to help people who were injured and did not know how to pursue justice. She began applying to law firms but faced rejection after rejection due to her lack of experience. When she reached out to me, I hired her as a legal assistant without hesitation.

As part of our personal-injury department, Rosibeth gained hands-on experience, walking side by side with our injured clients. She knew that every injury is a story of pain, resilience, and hope – not just a claim number. Rosibeth's hard work and determination continued, and she excelled in her position at the firm.

In 2020, Rosibeth moved to northern California to be with her partner, and closer to her mother who had moved to Oregon. I was sad to see her go, but we kept in touch. When she told me later that year that she was applying to law school, I immediately wrote her a letter of recommendation and I was truly moved by her personal statement, which I had the opportunity to read. Unsurprisingly, her motivation and hard work drove her to tremendous success in law school. She graduated cum laude from the University of San Francisco, School of Law.

During her third year of law school, Rosibeth came back to us again, this time as a law clerk, working remotely at my firm. Once again, she excelled in this position, still walking side by side with our clients, understanding their pain and suffering, and connecting with them the same ways we did with her. Then, Rosibeth took a break to study for the bar, and returned to the firm thereafter. After passing the California bar examination on her first try, I am proud to say that she became an associate at my firm.

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Why is walking side by side with clients essential?

Walking side by side with clients creates the necessary groundwork to achieve outlier results as plaintiffs' attorneys can capture crucial instances of pain and suffering on video which then can be a useful settlement tool for negotiations down the line.

Unlike insurance companies and defense firms, we see our clients as authentic and unique individuals. We guide them through their recovery journey, prioritizing their needs and well-being. Importantly, we document their stories with video production and photographs as early as possible, even at the hospital if necessary. Only then are we able to convey their story to the defense, even after our clients reach maximum medical improvement. We do not bother ourselves with a story based on medical expenses and the number of visits to a chiropractor or physical therapist. Instead, we communicate a narrative that emphasizes the impact of the accident on the physical, emotional, and mental health of our clients. We prove that the accident shattered our client's lifestyle.

Stories have the power to drive settlement negotiations. Showing the defense that our clients are not claim numbers and that we actually thrive on trying cases sends a strong message. With powerful video production and animation supports, defense counsel know that we advocate for the rights of our clients and do not accept low-ball offers. Disrupting their strategies to attain outlier results can only be done if we show our clients' stories in an efficient and persuasive manner.

For instance, with Rosibeth's case, our team was with her throughout the whole process: driving her and her mother to medical appointments, explaining the outcome and the future care in understandable terms, helping her becoming knowledgeable of her injuries and how they may affect her future, and being there when she needed us most. Rosibeth even ended up becoming close friends with her case manager and the attorneys on her team. She is now family.

When we walk side by side with our clients, we know and sympathize with their pain and suffering, and, therefore, can tell powerful stories that will impact settlement offers. In turn, our clients also feel supported, valued, heard, and can provide their testimony with confidence because they know their injuries and the ways in which they affect their lifestyles.

Importantly, the insurance company's army of defense lawyers will not intimidate them, especially in instances where good lawyers have courage, enthusiastic support from their team, and vast resources from their firm to try righteous cases.

When the client no longer has a readily visible injury

Video production and animation supports can help achieve substantive pain-and-suffering awards for plaintiffs at maximum medical improvement. No mathematical formula exists for pain and suffering, and such "inquiry is inherently subjective and not easily amenable to concrete measurement." (*Pearl v. City of Los Angeles* (2019) 36 Cal.App.5th 475, 491.) Since this formula is subjective, Plaintiffs' attorneys need to convince the decision-makers of their case with powerful settlement videos demonstrating the hardships of overcoming their injuries as well as authentic 3D animation videos reconstructing the accident, the injury mechanics, and the medical procedures.

Presenting an injured party who has no readily visible maladies to a jury raises concerns. The defense will embrace their traditional three-Ds strategy of delay, deny, and devalue, and attempt to make it seem as if the case we are presenting is incongruous and disjunctive. They will try to trick jurors into believing nothing is wrong with our clients because they have no outwardly visible injuries at trial. Yet such strategy falls flat when persuasive plaintiffs' attorneys use efficient visuals, such as mechanism of injury videos and surgery animations, to create a visceral impact on the triers of fact. This is why I strongly believe that not using visual components from the outset is a grave mistake in the representation of injured individuals.

Pertinent video production supports

"Day-in-the-life" video

A day-in-the-life video is a powerful method to show your client's story to the jury, arbitrator, or mediator to convey the extent and scope of general damages and the impact to the client's daily life. Typically, these videos portray the injuries, daily routines, hardships, and physical limitations your clients endure. The goal is to capture the loss, the level of care received, and the emotional burden of the accident.

Settlement videos

Settlement videos are documentary-styled footage showcasing the key aspects of liability, damages, and important legal arguments aimed at convincing the defense to settle the case. To round out the video and cement its quality, consider a professional voiceover for narration of liability and causation issues. Do not be afraid of including interviews of family members, family photos, and family videos from your clients.

With Rosibeth's case, for instance, we created a powerful settlement video narrating what her goals and ambitions were prior to the accident. The video then revealed how the accident impacted those goals and ambitions. The news coverage of the accident was woven through the video as well. Of course, a lot of footage of her medical journey was also present. Together, these elements were able to successfully illustrate the extent and scope of her pain and suffering.

Authentic 3D animation videos

Another powerful way to convey our stories is through an accident reconstruction animation video that uses scientific crash data and forensic expert analysis to show the effects of the force and trauma impacts to the different layers of the plaintiff's body parts. Such videos seek to substantiate the existence

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of our client's injuries, depicting how the accident occurred, what happened to the body of the victim at the time of the impact, which specific body parts sustained injuries, and who is at fault. No matter how one articulates their oral argument, visual components help the jury retain information because such videos create a visceral response, which then translates into substantive pain-and-suffering damages.

These videos also provide multiple perspectives of the accident, exposing multiple points of view, and what should have happened, i.e., when and where the wrongdoers should have applied their brakes. They are great tools to educate the jury in understandable terms about how the accident occurred and how it caused the plaintiff's injuries.

With Rosibeth's case, we created an authentic 3D animation of the accident, showing how the impact caused her injuries. The illustrations made it clear that the defense propagated fabricated arguments.

Medical illustration of plaintiff's injuries and surgical interventions

The average person, and average juror, have no nuanced understanding of what a spinal fusion surgery, or spinal cord simulator implant, or a wrist plate implantation consists of. The surgery reports contain confusing medical terms. If there is one thing for certain, confusion only benefits the Defense. Confusion harms plaintiffs, who have the burden of proving their case.

Using 3D animation videos to support our medical expert's testimony at trial is highly effective, especially regarding complex surgical procedures. The jury (along with the defense attorneys and their adjusters) can observe the procedure, thereby better understanding what is occurring. Seeing the 3D reproduction of the medical procedure also prevents the defense from fabricating arguments that the plaintiff's mental distress was insignificant, since they recovered from the procedure and have reached maximum medical improvement. An animation video of the plaintiff's medical procedure can show the specifics of the medical procedures, conveying effectively more information than a boring, complicated surgical report.

Rosibeth achieved her maximum medical improvement of her life-altering injuries by the time mediation occurred. This was a great relief, but it did not in any way minimize the value of her case as the defense attempted to argue. We showed what her medical procedures consisted of with 3D animation videos; the defense knew we were ready for battle. Consequently, the case settled with a reasonable and satisfactory offer to Rosibeth.

Conclusion

Plaintiffs' attorneys weave narratives. The most efficient way to do this is through visual components because as humans we value things as we see them. Not using visual components in your case would be doing it a disservice. A photograph or video is worth a thousand words. This is why at my firm we shoot videos several times throughout the process and ensure that our stories are well presented. This sends a message to the defense that we are tenacious and diligent. We are capable of fighting for the top value of our cases and will not entertain low-ball offers. Our firm invests a large amount of effort into cases early on to shorten the time that it takes for us to achieve a fair resolution for our clients. Visual components will help you do the same. If you leverage visual aids correctly, you will begin to gain leverage that forces the Defense to increase their monetary valuation of the pain and suffering your clients have endured, even after they have reached maximum medical improvement.

Rosibeth has kindly agreed to waive the attorney-client privilege regarding parts of our communications for purposes of this article and was happy to share her story with our community. We love you, Rosa! Keep making us proud!


Saadian

Bobby Saadian, JD/MBA founded the Wilshire Law Firm, PLC, *in 2007, and the firm now has a nationwide practice with over 170 lawyers and 650 team members. The firm's practice focused on personal injury, sexual abuse, employee rights, and consumer-class action cases. He serves on the boards of both CAALA and CAOC.*

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