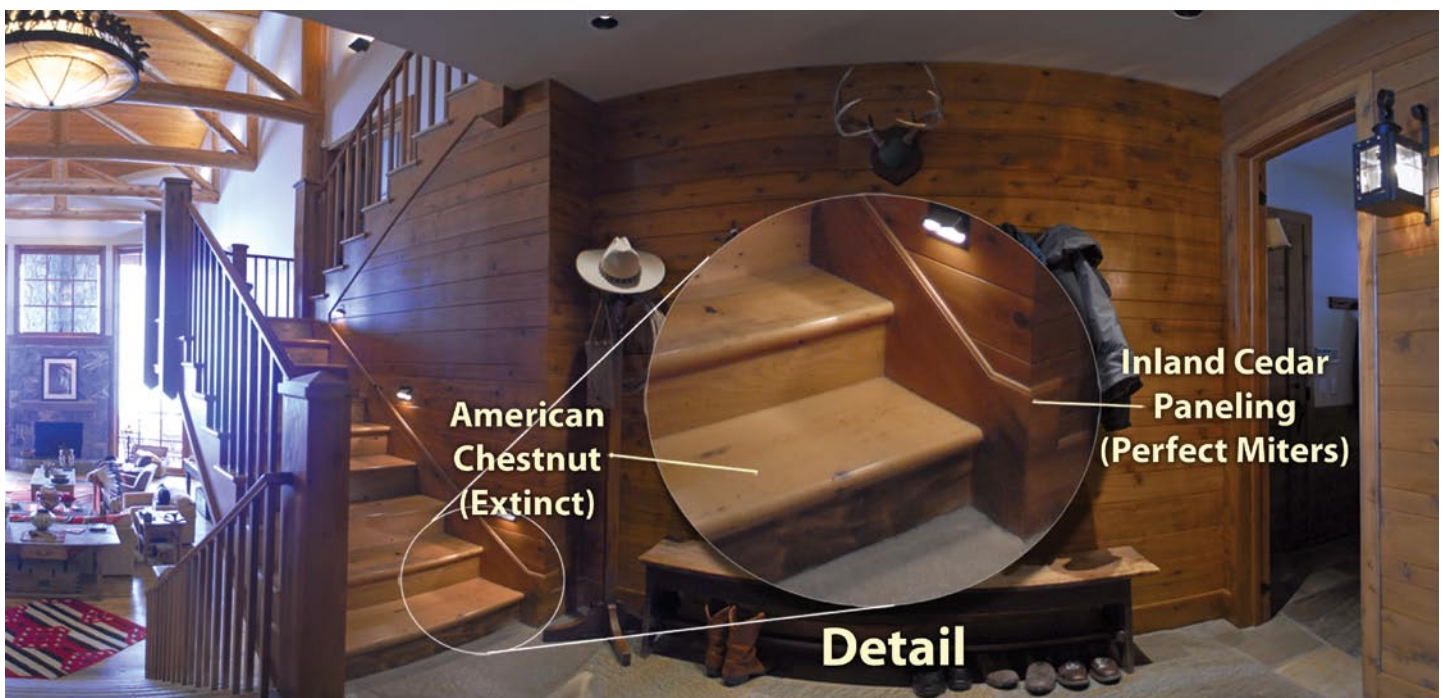


# It's All in the Details

DreamWorks' CEO battles Goodyear over pipes that endangered historic floors.



*By David Horrigan*

repair leaking pipes in *A.E., Inc. v. Goodyear Tire and Rubber Co., Inc.*, No. 05-CV-01317 (D. Colo. 2007).

**J**effrey Katzenberg, CEO of DreamWorks Animation, produces movies, such as the blockbuster *Shrek* series, using the latest technology. Goodyear, the nation's largest tire company, is no stranger to technology, spending \$372 million last year on research and development.

## EXTINCT TREES

The American chestnut tree was once a ubiquitous part of the eastern United States terrain. The stately trees covered more than 200 million acres from Maine to Florida, and were the tallest trees in eastern forests. The American chestnut was an important part of the region's ecosystem as well as an important part of the economy, with its nuts serving as a cash crop and its lumber furnishing homes.

So, when Katzenberg and Goodyear went to court last year in a dispute over replacing defective Goodyear heating hoses at Katzenberg's vacation home, they both turned to visual technology to support their positions. The battle provides a glimpse into how trial technology can be used to show jurors not just the structure and mechanics of a multi-million dollar home, but also the craftsmanship and rare wood that went into it — an important issue when the two sides couldn't agree on how to

However, in what Virginia Tech plant pathology professor Gary Griffin has called "the most destructive disease ever to strike American forests," a blight decimated the American chestnut. Caused by a fungus carried into the U.S. from Asia early in

the last century, the blight killed 3.5 million American chestnuts, leaving the tree almost extinct.

### DREAM HOME

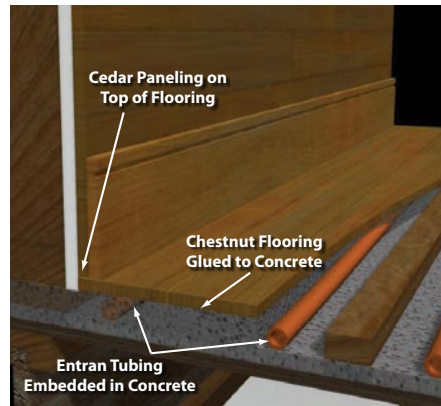
When Katzenberg decided to build a vacation home for his family, he chose the skiing enclave of Deer Valley, Utah, and spared no expense. Designed by Charles Gwathmey, the designer of the 1992 renovation of New York's Guggenheim Museum, the home also featured an interior designed by Naomi Leff, who has designed for Ralph Lauren and other celebrities.

"This home was the place in the world Jeffrey would go to get away," said David Black, a partner at Denver's Holland & Hart and one of the lawyers who represented Katzenberg.

Katzenberg's builders found American chestnut wood in an old building in New England, which was transported to Deer Valley to become the floor of the new home. But the home's heating system was an expensive highway of hoses with problems that could spell doom for Katzenberg's beautiful floors.

Heatway Systems of Springfield, Mo., distributed radiant heating systems that used rubber hoses embedded into floors. The hoses transported hot water, which radiated from the hoses to provide heat. One version, the Entran II, was manufactured by Goodyear and sold throughout the U.S. from 1989 to 1993.

Katzenberg was among the homeowners who soon began reporting problems with the hoses, claiming they became brittle and broke easily. Heatway and Goodyear were soon in court. See *Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 7 F. Supp.



2d (N.D. Ohio 1998).

Not only were Entran II hoses installed beneath the home's granite outdoor patios — allowing Katzenberg to melt ice and snow with the flick of a switch — the pipes were placed throughout the home, including underneath the chestnut floors.

Goodyear agreed that the defective Entran II hoses had to be replaced. But removing them was no easy feat, and not an inexpensive endeavor. The parties argued over compensation, and unable to resolve the dispute, Katzenberg sued Goodyear, seeking more than \$5 million in damages.

### THE TECHNOLOGY

To show the jury how difficult removing the hoses would be, Holland & Hart's Black turned to the firm's in-house litigation support shop, Persuasion Strategies. It differs from most in-house operations because it handles work not just for the firm, but for outside companies and even other law firms — including Holland & Hart's competitors.

"We have to run conflict checks with [its] clients exactly as if they were clients of the firm," said H&H partner Scott Barker, who was instrumental in the creation of the shop, which also offers jury consulting, mock trial, and mock arbitration services.

Pen Volkmann, director of graphics and video services, led the Katzenberg technology team. He used computer animation, a physical Fome-Cor model from Alcan Composites USA Inc. ([www.fomecor.com](http://www.fomecor.com)), and a computer-aided visual tour of the Katzenberg home to show the jury what it would take to remove the hoses without destroying the home.

The video tour had been previously shot before Volkmann's team joined the litigation team, was filmed "on a dark day with no additional light, so we had to bump up the luminance and speed up the playback to give the jurors the best views of the home," Volkmann said. Filming was done out of sequence, he noted, requiring additional editing as the Katzenberg team took more than two hours of digital video mini-tape recordings and condensed it into a presentation that lasted less than 15 minutes.

The animation was created with Autodesk Inc.'s Maya software running on Apple Inc.'s Mac quad core G5. For the computer-aided visual tour of the home, Volkmann used Apple's QuickTime Virtual Reality software, which was loaded into inData Corp.'s TrialDirector 5.0, running on Microsoft Corp.'s Parallels Windows software.

"QTVR helped us illustrate the difficulty of what had to be done by allowing us to zoom in and out of various parts of the house," said Volkmann. The presentation gave the jury a panoramic view of the home, and provided close up shots, showing how the American chestnut floors were integrated delicately into the other wood in the home, he said. (See videos, pictures, and

court documents at [www.lawtechnologynews.com/Katzenberg](http://www.lawtechnologynews.com/Katzenberg).)

"With QTVR, we were able to zoom in and show the jury this rare wood," Volkmann noted.

"You couldn't just cut out a section," said Black, stressing the intricate craftsmanship that went into the interconnection of the wood. "It would look awful, and Jeffrey wouldn't go for that."

### ANIMATION HURDLES

Creating the animation also had its hurdles.

"I was hoping the architect had CAD files, but he was actually quite proud that his drawings were done by hand," said Volkmann, referring to computer aided design software. But the hand drawings made it more challenging for the tech team. "With CAD files, we could have downloaded them into Maya directly, but the hand drawings required scanning and additional manipulation," Volkmann noted.

The team's goal was to illustrate the extensive work involved with creating the woodwork. "We needed to show jurors the work that went into the interlocking walls and floors, and the technology helped us show the jury that getting a result that looked the way it was is an expensive problem," Black said.

### THE DEFENSE

The Goodyear team included partner David Lenyo, of Aspen-based Garfield & Hecht, and Roger Thomasch, managing partner of the Denver office of Philadelphia's Ballard Spahr Andrews & Ingersoll. Their mission was to reduce the amount of a potential damages award. "There were numerous Entran II claims, and we didn't differ on the cost with many of them, but Mr. Katzenberg was

going to the extreme in how he wanted to take the house apart," said Thomasch. "We just thought it was unnecessary to destroy the house to replace the hose."

For their technology, the Goodyear team turned to Mike Lombardi, a former Garfield & Hecht paralegal who had left the firm, earned an M.B.A., and started his own litigation support shop, Tucson-based Vertigrate Inc.

Lombardi's approach was to create a presentation that would take full advantage of his hardware and software — and the strengths of the high technology facilities at Denver's Alfred A. Arraj United States Courthouse.

Lombardi took advantage of the courtroom's plug-and-play capabilities, and set a goal of creating an uncomplicated presentation.

To help make the case that the Entran II could be removed without wrecking the entire house, Lombardi loaded both blueprints and related documents into TrialDirector 5.0, using IBM/Lenovo ThinkPad T42s.

"We used our exhibits to show what was actually necessary to replace the the system," Thomasch said.

Goodyear rejected Katzenberg's position that replacing the Entran II system would require tearing out the cabinets and wood trim, Thomasch said.

Garfield & Hecht's Lenyo, a self-described "old-fashioned type of attorney," said he is not very technology-savvy. But he agreed with Lombardi that the courtroom and its policies helped the defense present its case effectively. Denver's federal district court requires high-tech presentations, Lenyo said.

"Old-fashioned demonstratives

are generally not presented," he said. Because typical jurors are familiar with visual tools such as Microsoft Corp.'s PowerPoint, "electronic presentations can help them understand the documents in a typical construction project."

By contrast, says Lombardi, the Katzenberg team may have gone overboard with its presentation — which ran the risk of alienating the jury.

"It got to the point where it was more like the plaintiffs were just trying to show off Katzenberg's home," Lombardi said.

Thomasch agreed. "It's important to avoid glitz for the sake of glitz," he said.

### THE VERDICT

Both sides claimed victory when the jury returned its verdict on Feb. 9, 2007, after a five-day trial. The jury found \$2.17 million in damages — more than Goodyear had wanted to pay, but less than the \$5 million Katzenberg said was needed to save his American chestnut floors. Repairs are currently underway. **LTN**

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