

Proceedings

1 THE COURT: Okay. Let's bring them in.

2 THE COURT OFFICER: All rise.

3 Jury entering.

4 (Whereupon, the jury entered the courtroom.)

5 THE COURT: Good morning, jurors. You may be
6 seated. Everyone may be seated.

7 At this time, again, for his last witness out of
8 order, we're gonna call -- Mr. Wynne, call your next
9 witness.

10 MR. WYNNE: Thank you, your Honor.

11 Defense calls Dr. Joseph Tuvia who I believe is
12 seated outside.

13 COURT CLERK: Please step up here and raise your
14 right hand.

15 J O S E P H T U V I A, M.D., a witness called by the
16 Defendants, after having been first duly sworn by the Clerk
17 of the Court, took the witness stand and testified as
18 follows:

19 COURT CLERK: Thank you. Have a seat and please
20 state your name and your business office for the Court.

21 THE WITNESS: Joseph Tuvia, T-U-V-I-A. It's 240
22 Madison Avenue, New York, New York, 10016.

23 COURT CLERK: Thank you.

24 THE COURT: You may inquire.

25 MR. GERSHON: Thank you, your Honor.

Dr. Tuvia - Defendants - Direct

1 DIRECT EXAMINATION

2 BY MR. WYNNE:

3 Q Good morning, Doctor.

4 A Good morning.

5 Q Doctor, would you please acquaint the jury with your
6 professional background?

7 A I'm a diagnostic radiologist.

8 Q Would you please tell them what that means?

9 A I interpret all types of imaging; plain films,
10 ultrasounds, CT, MRI, and such.

11 Q That is a recognized specialty within the medical
12 profession?

13 A Yes, it is.

14 Q Are you board certified?

15 A Yes, I am.

16 Q Can you tell the jury, what are you doing now?

17 A Part-time working at Lincoln Hospital in the Bronx as a
18 staff radiologist which involves interpreting studies for
19 inpatients and outpatients. We are very busy emergency room.

20 Q Doctor, were you retained by the Transit Authority to
21 review certain films relating to Tiffany Halsey?

22 A Yes, I was.

23 Q And did you receive those films and review them?

24 A Yes.

25 Q Doctor, we have those films in evidence today. I'd

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Dr. Tuvia - Defendants - Direct

1 like to start, if I could, with the MRI of the right shoulder.

2 MR. WYNNE: Actually, would you please give all
3 the films to the doctor? He can sort them out better than
4 I can.

5 (Whereupon, the documents were shown to the
6 witness.)

7 Q Doctor, for the record, would you just state -- you see
8 those green tabs on each of those envelopes?

9 THE COURT: Number 12. 12 was the MRI.

10 Q Let's start with Exhibit number 12, please, and we have
11 a shadow box here to assist you.

12 Now, Doctor, you've just placed one of the films on the
13 shadow box. Would you tell the jury what that is?

14 A That is an MRI of the patient's right shoulder. You're
15 looking at the patient, this is the humeral head over here, we
16 see a portion of the humerus down here. It articulates with the
17 other bone.

18 Q Doctor, did you interpret the films related to the
19 right shoulder?

20 A Yes, I did.

21 Q And what was your interpretation with a reasonable
22 degree of medical certainty?

23 A The interpretation was there is a partial tear. You
24 can actually see it probably better on the other sequence.
25 Typically, the tendon -- there is a muscle and there is a

Dr. Tuvia - Defendants - Direct

1 tendon. A muscle attaches to the bone, to a tendon, and there
2 is a little bit of increased signal intensity in this tendon and
3 that's a partial tear.

4 Q And, Doctor, could you tell the jury the difference
5 between degenerative and traumatic injuries?

6 A Yes. Degenerative is something probably all of us
7 acquire, to some extent, over our lifetime because of chronic
8 wear and tear. We get it in the morning, we lift things, shove
9 things, move things, use our shoulders. Over years and years,
10 the results is degenerative disease.

11 Q And with regard to this particular injury relating to
12 the right shoulder, were you able to determine one way or
13 another whether this reflects a degenerative or a traumatic
14 injury?

15 A No, I was not. There's no -- in the appearance of
16 degenerated, traumatic, sometimes the outcome looks the same.
17 We can't determine with, you know, what you call, adequate
18 certainty?

19 Q Okay.

20 A How --

21 Q Next I'd like to discuss the films relating to the
22 plaintiff's right elbow. Take your time, Doctor. I don't mean
23 to rush you.

24 A I'm having difficulty partly because you can see the
25 side of the images, the patient moved and you're getting a lot

Dr. Tuvia - Defendants - Direct

1 of lines that don't make any sense. That's artifacts. These
2 images are better quality and they show you -- should I go on?

3 Q Yes, please.

4 A They show the distal triceps is irregular. Again,
5 tendons are supposed to be black and that's increased signal
6 intensity and there's some discontinuity here on the regular
7 signal, what we call it's consistent with a tear.

8 Q So your impression of the right elbow from these films
9 is what?

10 A Triceps tendonous tear.

11 Q Were you able to reach a conclusion with a reasonable
12 degree of medical certainty as to whether that condition was
13 degenerative or traumatically induced?

14 A Yeah, that would be posttraumatic.

15 Q So that's a result of an accident most likely?

16 A That's likely.

17 Q Okay. Now, lastly, I'd like you to take a look at the
18 MRI films related to the plaintiff's lumbar spine.

19 A Okay. This is the lumbar spine. You're looking at the
20 patient from the side. If I was to stand like this, that's the
21 way you're looking at my lumbar spine. These are the lumbar
22 vertebra. In between the right signal structures are disks.
23 Some of the low signal structures are disks as well.

24 Q Now, were you able to come up with an impression with a
25 reasonable degree of medical certainty based upon these films?

Dr. Tuvia - Defendants - Direct

1 A Well, for starters, as you can tell, that the lower
2 disk here, it's an L4-5 disk, is of much decreased signal
3 compared to the other disk. That lost signal basically tells
4 you it's degenerated, right, and it's bulging a little bit
5 posteriorly, and this kind of pokes into what we call the dural
6 sac. It's just minimal compression on the sac here.

7 Q You mentioned a bulge. Is bulging disk a type of
8 medical condition?

9 A Yes, it is.

10 Q And are there other conditions relating to the disks
11 that are more or less severe than that?

12 A More severe by being disk herniation.

13 Q Did you see a disk herniation in these films?

14 A No, I did not.

15 Q And, Doctor, just for the record, these films were
16 taken August 8th, 2008, about two months after the plaintiff's
17 accident?

18 A That's correct.

19 Q Now, Doctor, you found a bulge in the plaintiff's
20 lumbar spine and the plaintiff was in her mid-twenties at the
21 time. Is it unusual for someone in their twenties to have a
22 bulging disk?

23 A Bulging disks are not unusual. We see it all the time
24 in patients who are not even symptomatic with respect to the
25 disks. They could have a CT of the belly because they have

Dr. Tuvia - Defendants - Direct

1 abdominal pain. You see disk bulges there all the time.

2 Q Now, were you able to reach a conclusion with a
3 reasonable degree of medical certainty as to whether this
4 condition was traumatically or degeneratively caused?

5 A It's probably degenerative.

6 Q What do you base that on?

7 A On the fact that the disk is desiccated and
8 degenerated. In effect, we see no sign of trauma whatsoever.
9 There is no fracture, no dislocations, there is no hematoma,
10 there's no soft tissue swelling, nothing else, just the disk
11 bulge.

12 Q What's a hematoma?

13 A A blood.

14 Q You mentioned desiccation. Could you tell the jury
15 what that is?

16 A When we are born, we look like this, very bright disks,
17 and over time, like I say, we get up in the morning, the whole
18 thing, we carry weight on our back, it all boils down to
19 typically, it's a very typical -- it boils down to the lower
20 lumbar spine, and over time, these disks lose their water
21 content. They become less pliable. They are kind of shock
22 absorbers that over time get bad and when they get bad, they
23 look like this with decreased signal intensity.

24 Q Doctor, do you have an opinion with a reasonable degree
25 of medical certainty as to whether the condition of the lumbar

Dr. Tuvia - Defendants - Cross

1 spine as depicted in those MRI films warranted spinal fusion and
2 bone graft?

3 MR. GERSHON: Objection. Beyond the scope.

4 THE COURT: Sustained.

5 MR. WYNNE: I have no further questions. Thank
6 you.

7 THE COURT: Okay. Cross-examination.

8 THE WITNESS: Do you want this here?

9 THE COURT: Do you want that up or we can take it
10 down?

11 MR. GERSHON: No, I don't need it.

12 THE COURT: Sorry. Okay. We'll take it down.
13 You may inquire.

14 MR. GERSHON: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. GERSHON:

17 Q Good morning, Doctor.

18 Good morning, ladies and gentlemen.

19 Good morning, Doctor.

20 A Good morning.

21 Q Doctor, just so we're clear, as a radiologist, you
22 don't see patients, correct?

23 A That's incorrect.

24 Q You do see patients?

25 A Sometimes.

Dr. Tuvia - Defendants - Cross

1 Q Okay. And you've never seen Tiffany Halsey, correct?

2 A Correct.

3 Q So it's safe to say as it relates to this case, your
4 involvement with this case is limited to your review and
5 interpretation of the MRI films, correct?

6 A Correct.

7 Q Now, with respect to the MRI of the right shoulder, you
8 actually said you actually saw what the surgeon didn't even see;
9 you actually found a partial tear of the distal supraspinatus
10 tendon, correct?

11 A Correct.

12 Q So as defendants' doctor or doctor for Transit
13 Authority, you're basically coming here and saying even though
14 the surgeon didn't see it until he had surgery, you actually saw
15 it on the films, saw that she had a tear?

16 A She had a partial tear.

17 Q A partial tear. Okay.

18 And, Doctor, now, at the end of your -- I believe you
19 testified that you weren't sure whether or not it was
20 degenerative or posttraumatic, correct?

21 A I say it cannot be determined.

22 Q Okay. And, in fact, you said even though -- and you
23 found a tear, so there's no question, so did the doctor when he
24 went in -- the above findings may be degenerative or
25 posttraumatic, correct?

Dr. Tuvia - Defendants - Cross

1 A Right.

2 Q So you couldn't really determine at that time. Okay.

3 But, Doctor, I'm just gonna call your attention to
4 your -- the body of your report, and please refer to it if you
5 want.

6 A Okay.

7 Q With respect to the right shoulder.

8 A Uh-huh.

9 Q And I believe you indicated that there are no
10 significant degenerative changes, correct?

11 A Correct.

12 Q Okay. So although you are not sure whether or not it
13 was -- you couldn't make the call, you weren't saying it wasn't
14 traumatic, you just weren't sure, correct?

15 A What I said is it cannot be determined --

16 Q Okay.

17 A -- from the study whether it's degenerative or
18 posttraumatic.

19 Q Okay.

20 A Because there is an overlap in the findings.

21 Q Fair enough, but when you were reviewing the films, you
22 actually made a point to say that her right shoulder had no --
23 showed no significant degenerative change, correct?

24 A Right.

25 Q Okay. And, Doctor, with respect to all these films,

Dr. Tuvia - Defendants - Cross

1 these taking of the films, you agree you see patients, they're
2 all -- it's -- an MRI, an x-ray, a CAT scan, all these tests,
3 they're just diagnostic tools to -- to determine a patient's
4 injury and treat the patient, right?

5 A Yeah.

6 Q You'd agree that the ultimate goal -- you don't just
7 read it in a vacuum; the ultimate goal is to help somebody?

8 A Yes and no, not exactly. Sometimes you need clinical
9 input to figure things out. Sometimes it's not necessary.

10 Q Okay, but clinical input, you mean clinical input would
11 be something that would help someone in rendering a diagnosis,
12 for example, the films are great and I'll go with you, powerful
13 diagnostic tools, but then if you had a doctor actually look at
14 the person, take a history, examine, and everything else, and
15 you put it all together, that certainly is not less powerful,
16 correct? It just adds more information?

17 A I'll say this. Sometimes yes, sometimes no, and when
18 it comes to the lumbar spine, the correlation between the
19 findings on the MRI and CT of the lumbar spine, and the
20 patient's symptoms are not always that great. You see patients,
21 especially older ones, with awful spinal stenosis. They are
22 fine. They can't get off the magnet or can't get off the
23 scanner because there's spinal stenosis.

24 Q Okay.

25 A It's not always the case. You read the films. That's

Dr. Tuvia - Defendants - Cross

1 my job as a radiologist. You read the film, you send the
2 report.

3 Q Okay. Fair enough.

4 And, Doctor, I want you to assume that at no time prior
5 to this accident did Miss Halsey ever have any complaint
6 whatsoever about her right shoulder. If you take that
7 information in conjunction with your MRI where you said you
8 weren't sure whether it was posttraumatic or degenerative, would
9 you agree that that would lead a doctor more along the lines it
10 must have been caused by the accident?

11 A If the patient had no symptoms before and now she's
12 symptomatic?

13 Q Yes.

14 A Yes.

15 Q Thank you.

16 Now, with respect to the -- let's go on to -- aside
17 from the right shoulder tear that you indicated you saw on the
18 films, let's go over to the right elbow. Okay?

19 A Okay.

20 Q Now, with respect to the right elbow, after reviewing
21 the films as a doctor for the New York City Transit Authority,
22 you found that Miss Halsey had a distal triceps -- you found --
23 withdrawn.

24 As a doctor for the Transit Authority, you found that
25 the -- there was a distal triceps tendon, that it was irregular

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Dr. Tuvia - Defendants - Cross

1 in contour with increased signal consisting of a partial tear,
2 correct?

3 A Correct.

4 Q And you also said that those findings were consistent
5 with a triceps tendon partial tear, correct?

6 A Correct.

7 Q And you, as a doctor, examining doctor for the
8 New York City Transit Authority has come in and said that you
9 believe that that tear was traumatic, correct?

10 A Yes.

11 Q Okay. Thank you, sir.

12 So if we can, let's just go to what's left, the lumbar
13 spine. Okay?

14 A Right.

15 Q By the way, you mentioned something -- well, the disks
16 themselves, they don't have blood; there's no blood supply in
17 the disk, right?

18 A When we start off as children initially, minimal.

19 Q Right.

20 A But over time, yes.

21 Q Okay. So when this was taken, Ms. Halsey was 24. At
22 that point, there's no blood in the disk, right?

23 A There is some vascularity to the periphery of the disk,
24 no vessels within the disk.

25 Q Okay. So the disk itself has no blood supply, correct?

Dr. Tuvia - Defendants - Cross

1 A Yes.

2 Q Okay. So -- okay.

3 Now, your MRI -- when you reviewed the MRI, you didn't
4 find -- it wasn't a normal MRI, correct? You found a disk bulge
5 at L4-L5, correct?

6 A Correct.

7 Q And your opinion was that there was a bulge at L4-L5,
8 but you didn't find any significant central or foraminal
9 stenosis, correct?

10 A Correct.

11 Q Which means in your impression there, that disk was not
12 impinging on the nerve root that was exiting the foramina at
13 around the L4-L5 area, correct?

14 A Right.

15 Q Okay. So you would disagree, then, with the treating
16 radiologist who read it as an L4-L5 bulging disk with a mass
17 effect on the neural foramina and nerve root, correct?

18 MR. WYNNE: Objection.

19 THE COURT: I'll allow it.

20 A You said something to the effect of a treating
21 radiologist?

22 Q Yeah, the radiologist who initially read that MRI.

23 A He's not treating this patient.

24 Q Okay. I -- okay. I don't wanna quibble with words.
25 All right? So let's go with you. Okay. I'll forget about

Dr. Tuvia - Defendants - Cross

1 treating because it's just semantics.

2 A Okay.

3 Q The radiologist who initially read the MRI films at the
4 facility where it was taken, you would disagree with that
5 radiologist if he said that what he saw in the films was that
6 the nerve root and foramina were being impinged upon? You
7 disagree with that?

8 A Correct.

9 Q And, Doctor, you've never seen the surgical report,
10 correct?

11 A No.

12 Q Okay. And an MRI, okay, you said it's a powerful tool,
13 right, but it's a non-invasive tool, correct?

14 A Correct.

15 Q And by that I mean, you're actually not going into
16 someone's body and seeing it firsthand, correct?

17 A Correct.

18 Q All right. We're talking about images with magnets and
19 water and they're very helpful and powerful, correct?

20 A Correct.

21 Q But wouldn't it be safe to say that someone that
22 actually goes in surgically to the body is in a better position
23 to really see what is going on because he's looking right at it
24 and also can feel it and touch it with instruments?

25 A Sometimes yes, sometimes no.

Dr. Tuvia - Defendants - Cross

1 Q Okay. So your -- your testimony is that there are some
2 times that an MRI film is better than actually a doctor going in
3 firsthand into a person's body and being able to see it
4 firsthand?

5 A Right. The statement you're making is you think that
6 the area in question isn't visible on surgery. They make a
7 small nick in the skin, put in a little instrument, and try to
8 wiggle their way around, and it's not that easy.

9 Q Okay. Well, Doctor, that would -- that would depend on
10 the surgery. I believe what you're referring to is something
11 called arthroscopic surgery, correct?

12 A Right, but even --

13 Q But --

14 A Even when you --

15 THE COURT: Wait.

16 MR. GERSHON: Sure, sorry.

17 Q My apologies.

18 A Even when you do surgery, you have to expose the soft
19 tissues, you know, just to get there and you don't wanna make
20 too big an opening, and even when you get there, there is a
21 limit to what you can see. You don't wanna go all the way out,
22 go taking a tour in the patient's body.

23 Q You're a hundred percent right and, in fact, Doctor,
24 that is why arthroscopic surgery is a wonderful development,
25 correct?

Dr. Tuvia - Defendants - Cross

1 A Sure.

2 Q Because usually, if someone injured a shoulder, years
3 ago, you'd actually have to go in and cut the whole shoulder,
4 correct?

5 A Right.

6 Q But now you don't have to do that. Now all you have to
7 do is go in with a probe which contains a camera and you go in
8 and you can -- that's what you have to do, correct?

9 A Right. Sometimes that area, even in arthroscopic
10 surgery, are difficult to visualize.

11 Q Okay. But, Doctor, you'd agree that although a
12 person -- if someone is -- is in -- the doctor is in there with
13 the probe during the surgery, he's looking firsthand at the
14 camera of that probe directly inside of a person's body as
15 opposed to outside with water and magnets on an image, correct?

16 A No. Like I said, sometimes it's -- it's difficult.
17 It's not as simple as you think, open it up and look. You have
18 to get around structures, over structures, and to the other side
19 of those structures to see, for instance, what's sitting in
20 front of them that will not be visible.

21 Q Okay. I'm not suggesting that anything is easy,
22 Doctor. Okay?

23 A Sometimes it's impossible.

24 Q Okay, but with respect to an arthroscopic surgery,
25 you'd agree that that is done with a camera?

Dr. Tuvia - Defendants - Cross

1 A Yes.

2 Q Okay. And then, if your doctor, as you say, couldn't
3 see something, it wouldn't be sound medical practice to report
4 something that he didn't see; you'd report that he couldn't see
5 it, correct?

6 A Right.

7 Q So if a doctor came in and rendered a report and that
8 report made a specific finding, we can agree that the doctor in
9 the case, whatever case we're talking about, saw what it was he
10 or she -- he or she is talking about, right?

11 MR. WYNNE: Objection.

12 THE COURT: Sustained.

13 Q Okay. Now, Doctor, by the way, you mentioned
14 arthroscopic surgery, which she, in fact -- Tiffany, in fact,
15 did have on her right shoulder.

16 Do you know what type of surgery Tiffany had to her
17 lumbar spine?

18 A No.

19 Q Okay. So as you sit here today, and I say this
20 respectfully, you came in, testified about what you saw, and we
21 appreciate that, but with respect to the type of surgery, as you
22 sit here today, since you don't know what type of surgery,
23 you're not really sure what the surgeon did, where he was, and
24 whether he was able to see it firsthand or not, correct?

25 A This is a presurgical MRI.

Dr. Tuvia - Defendants - Cross

1 Q Yeah. I'm not talking -- I understand that, but I'm
2 not talking about the MRI. I'm talking about -- you're talking
3 about your findings as opposed to a surgeon's findings and I
4 asked you who would be in a better position and you said that
5 the surgeon sometimes can't see it firsthand either because you
6 go in and we were -- that's where we started talking about a
7 scope, but what I'm asking you is a little different.

8 We know that the shoulder had a scope, I agree with
9 you, but with respect to the lumbar spine, inasmuch as you don't
10 know what type of surgery was done, okay, then would it be safe
11 to say that it would be difficult for you to determine whether
12 or not the surgeon was actually in there being able to see it
13 firsthand as opposed to seeing it with a probe on a camera? You
14 couldn't say?

15 A I'm here to testify on the MRI that was taken what were
16 the findings. Whatever followed, I don't know.

17 Q Okay. So if -- but as we said before, no medical --
18 and I appreciate your testimony that no medical doctor that was
19 certainly operating under sound practices would report on
20 something that they didn't see, correct?

21 A One would hope, yeah.

22 Q Okay. And, Doctor, are you aware that when Dr. Rafiy
23 went in to perform this lumbar surgery, he found nerve
24 impingement at the L5 root? Are you aware of that?

25 MR. WYNNE: Objection.

Dr. Tuvia - Defendants - Cross

1 THE COURT: Okay. Let's have a sidebar.

2 (Whereupon, an off-the-record conference was held
3 between the Court and counsel at the sidebar out of the
4 hearing of the jury.)

5 (Whereupon, the following occurred in open court:)

6 THE COURT: Objection overruled.

7 You may answer. Remember the question?

8 MR. GERSHON: It's all right. Withdraw the
9 question. I'll ask it again. I remember it.

10 Q Now, Doctor, are you aware of the fact that the surgeon
11 in this case, Dr. Rafiy, actually found nerve root impingement
12 at the L4-5 disk?

13 A I'm not aware and I'm surprised she was operated on.

14 MR. GERSHON: Okay. Move to strike the portion
15 that's nonresponsive.

16 THE COURT: I'm not striking it.

17 MR. GERSHON: Okay. That's okay.

18 Q Now, Doctor, are you aware of the fact that Dr. Rafiy
19 when he went in found nerve root impingement at L5 by the L5
20 facet? Are you aware of that?

21 A No, I'm not.

22 Q Okay. Now, with respect to you wouldn't operate -- you
23 you're certainly not a surgeon, right?

24 A I'm not a surgeon.

25 Q Okay. And you'd agree that a surgeon would probably be

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Dr. Tuvia - Defendants - Cross

1 in a better position to determine what surgery -- if and what
2 surgery was necessary as opposed to yourself, or you wouldn't
3 agree with that?

4 A Yes, even though sometimes there's good correlation in
5 what we see and the reason they operate and it's minimal.

6 Q Okay. Obviously, though, in the final analysis, it's
7 the surgeon that makes the call because it's the surgeon that's
8 trained in surgery in making that call, right?

9 A Yeah.

10 Q Okay. So that's all.

11 Now, your finding, okay, was that she had chronic
12 degenerative spinal disease, correct?

13 A Correct.

14 Q Okay. Now, you say -- now, but your MRI, okay, all
15 right, if we're talking about a degenerative spinal disease, you
16 only found it at one level, correct?

17 A Actually, L4-L5, and I believe there was one more
18 degenerated disk. Okay. L4-L5, it was degenerated, right.

19 Q Okay. So we're talking about just one level, right?

20 A Yeah.

21 Q So we're focusing -- you have -- we got L1 through --
22 L1 through L5, lumbar spine, you only found one level
23 degenerated. Now, actually, there is another at L5-S1. There
24 is a disk in between, but we don't have to get into that,
25 Doctor, right now.

Dr. Tuvia - Defendants - Cross

1 Isn't it a fact not only did you find one disk
2 affected, you found that the other vertebrae were normally
3 aligned?

4 A That's the way they are supposed --

5 Q Exactly right, that's the way they're supposed to be,
6 so the other ones -- and you also found that there was no
7 paraspinal swelling in the other ones also, the way it's
8 supposed to be, right?

9 A Right.

10 Q And, in fact, you found that the vertebrae were
11 basic -- were normal, right?

12 A Yeah.

13 Q Also the way it's supposed to be.

14 And you found that all the other disk levels were
15 normal, correct?

16 A Right.

17 Q So when we talk about degenerative changes --

18 A Uh-huh.

19 Q -- and degeneration, we're not talking about any other
20 level, we're just talking about at L4-L5, correct?

21 A Correct.

22 Q All right. Now, by the way, a 24-year-old, are you
23 testifying that you would expect a 24-year-old to -- to have a
24 degeneration?

25 A It depends. We see even in late teens, more so in

Dr. Tuvia - Defendants - Cross

1 heavy individuals, more so in individuals who do physical labor,
2 physical activity, so it's not unusual.

3 Q Doctor, I'm just gonna ask a few more questions and
4 then I'm going to wrap up. Okay?

5 Just with respect to -- you mentioned something about
6 disk herniation and disk bulge. Okay? In the final analysis,
7 okay, putting all this degenerative, non-degenerative aside, in
8 the final analysis, when it comes to the reality of dealing with
9 a patient and treating a patient, we're coming down to the main
10 thing and that is symptoms, correct?

11 A I'm not sure what you mean by the main things.

12 Q I understand it was an inartfully crafted question, so
13 I'm going to ask you this.

14 People don't generally -- well, first of all, disk
15 herniation versus bulge, would you agree that sometimes a film
16 could show a disk herniation and the person could live with it
17 without pain?

18 A Always.

19 Q All the time.

20 And would you also agree a person could have a bulging
21 disk and actually have complaints of pain?

22 A Sometimes we have difficulty correlating, like I said
23 before, especially in the lumbar spine where there's some
24 pathology. In a normal patient, we have difficulty correlating
25 the patient's symptoms with what we see in the MRI.

Dr. Tuvia - Defendants - Cross

1 Q Okay, but, Doctor, I understand that, but what I'm
2 saying to you is, isn't it true, you indicated that sometimes
3 you could have a herniation and be asymptomatic, or without
4 symptoms, and you answered yes, correct?

5 A Correct.

6 Q So now I'm just asking you the flip side of that
7 question. I'm trying to make it as simple as possible.
8 Sometimes when you see a bulging disk on a film and the person
9 is complaining about pain --

10 A Right, but then you have to ask yourself is the disk
11 the cause of the patient's symptoms, because as it gets more
12 minimum, more minimum to the point it's nearly normal, you gotta
13 ask yourself maybe the patient has some other condition.

14 Q Well, absent any other condition, would you --
15 withdrawn.

16 Are you testifying -- you're not testifying or
17 suggesting to the jury that someone could not have pain caused
18 by a bulging disk, correct? Bulging disks can cause pain,
19 correct?

20 A They could.

21 Q Okay. Now, Doctor, and most people -- let's -- once
22 again, I don't want to get into -- let's assume you're right.
23 Okay? Let's assume, and I'm not agreeing with you, and the
24 doctors aren't necessarily agreeing with you too, the surgeons,
25 but let's, for this courtroom purpose, let's assume you're

Dr. Tuvia - Defendants - Cross

1 right. Let's assume that Tiffany Halsey has a degenerative --
2 it's not the whole spine, so we'll go with your thing, the
3 L4-L5 -- the rest of the spine was normal, so let's go with the
4 L4-L5.

5 Let's assume for a second, okay, that you're right and
6 there's degenerative changes. Okay? If -- if someone went -- I
7 want you to assume that at no time prior than her 24 years of
8 life before this accident did Miss Halsey ever complain to any
9 doctor or anyone about any lower back pain, and then I want you
10 to assume that she has an accident, goes right to the emergency
11 room complaining about back pain and has had back pain ever
12 since the accident.

13 Can we agree at least, Doctor, that at the very least,
14 whatever was or was not going on in Tiffany Halsey's back was
15 aggravated or set in motion by this accident? Yes or no?

16 A I don't know that.

17 Q You don't know that?

18 A No. Had we taken an MRI before the accident and one
19 after the accident, we could tell.

20 Q But that's not what I'm asking you, Doctor. I'm not
21 asking you about films. Okay? And in the final analysis, I'm
22 talking about a patient. No one comes in, says, "Hey, I got a
23 bulging disk on my x-ray, Doctor, or my MRI, but I'm feeling
24 great," but people do come in and say, "Look, I'm feeling pain."

25 My question has nothing to do with films except the one

Dr. Tuvia - Defendants - Cross

1 you read. My question is basically this. Okay? Assuming what
2 you're saying is true, which I don't agree -- which the other
3 doctors may disagree, but let's go with yours; L4-L5 disk
4 degeneration with no symptoms prior to a bus accident, okay, and
5 then subsequent to that bus accident in which this 24-year-old
6 was a passenger, she has not stopped complaining about pain
7 since, can't reasonable minds agree that at the very least, that
8 accident aggravated and -- aggravated or set in motion her
9 symptoms? Yes or no, Doctor?

10 THE COURT: Counsel --

11 MR. GERSHON: That's my last question.

12 THE COURT: Thank you.

13 MR. WYNNE: Objection.

14 THE COURT: I'll allow it because it's his last
15 question.

16 Q Yes or no, Doctor?

17 THE COURT: If you can answer it yes or no or "I
18 can't answer yes or no."

19 A I can't -- I can't answer it like this.

20 Q Okay. I have nothing further.

21 THE COURT: Do you have any questions?

22 MR. WYNNE: No, your Honor.

23 THE COURT: You may step down.

24 Okay. As I told you, we would be finished early
25 in the morning, but we're gonna proceed at 2 o'clock and