



1 THE COURT: All right. Anything further?

2 MR. MCGRIER: Yes.

3 THE COURT: Yes, Mr. McGrier. Go ahead.

4 MR. MCGRIER: Just briefly, Your Honor. I  
5 think that Mr. Speckin has testified in terms of his  
6 own experience, testified sufficiently enough to  
7 allow this Court to accept him as an expert in a  
8 field that has already been accepted by this Court  
9 and the law of this case. He testifies as to the  
10 number of documents he's reviewed. He's also  
11 testified that he's been published. He had his  
12 papers published. He's presented sworn testimony in  
13 several other courts, other jurisdictions and never  
14 been rejected, Your Honor. I think that he is more  
15 than qualified to be an expert in this court.

16 THE COURT: The Court is mindful of the  
17 obligation that is placed on this Court to be a gate  
18 keeper; that is to keep pseudo or false science out  
19 of consideration by factfinders, and I'm also aware  
20 and guided by the Kumho Tire Company case which is a  
21 recent Supreme Court case which extends this  
22 gate-keeping obligation frankly beyond what is  
23 generally thought to be scientific or even as to  
24 technical types of expert opinions and testimony.

25 I believe that the testimony of Mr. Speckin

1 is appropriately to be heard by the jury in the sense  
2 that this is a generally-accepted scientific protocol  
3 or test. It appears that his work in particular has  
4 been subject to peer review and publication. He has  
5 explained that the rate of error or potential error  
6 in the test is within the test itself and that this  
7 is a generally-accepted set of theories or techniques  
8 in the relevant scientific community; that is, in his  
9 own peer group. I believe that the obligation of  
10 Daubert, and certainly an extension relative to all  
11 expert testimony, is pronounced by the Supreme Court  
12 in the Kumho Tire case.

13 I believe Mr. Speckin is an appropriate  
14 expert to testify in this case. That will be the  
15 ruling of the Court. The jury is right now across  
16 the way. We should probably get them in as soon as  
17 we can. Stay right in place.

18 (Whereupon, the jury returned to the  
19 courtroom.)

20 THE COURT: All right. Members of the  
21 jury, good afternoon again. Mr. Speckin has been  
22 called out of order, which is what I suggested to you  
23 earlier and told you what that meant. He is called  
24 by the defense, and he has already been sworn.

25 Counsel, you waive having him resworn, I