

1 T. Kolb - by Plaintiff - Direct  
 2 then the ligaments themselves also become brittle and they are  
 3 more are likely to herniate.  
 4 So the answer to the question is they are more likely  
 5 to herniate, although, there's no arthritis right here at the  
 6 site of the herniations. So there's nothing to suggest that  
 7 herniations themselves are from arthritis.  
 8 Q. Thank you, Doctor.  
 9 How about the cervical spine?  
 10 (Whereupon, there is a brief pause in the  
 11 testimony.)  
 12 Q. That's 21F or E?  
 13 A. 21E. So these are two pictures looking at the neck on  
 14 the side. And the anatomy is really the same, except there are  
 15 seven bones in the neck. C, the cervical spine, instead of L.  
 16 C1 through seven, but these are each the bones that we are used  
 17 to seeing (indicating). These are the disks that we used to  
 18 seeing (indicating). And again, the disks should come to the  
 19 margin of the bone (indicating). And it should stop.  
 20 Okay, so let's look at a normal level. C2-3, the first  
 21 one, do you see the disk, which we now know a lot about, comes  
 22 to the edge of the bone and stops. Here (indicating), there's  
 23 a --  
 24 MR. MORGAN: It's this one (indicating).  
 25 A. So, you have to look at all the pictures.  
 26 Q. Just identify it.

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 2 body within the spinal canal.  
 3 And you see, as we come down, there's a white stripe  
 4 because there no disk herniation at C2-3. As we come down  
 5 lower, we start losing, narrowing, and completely losing this  
 6 white stripe. And that's because the herniations are pushing  
 7 back, and, in fact, they are almost touching, or they are, they  
 8 are abutting or touching the spinal cord at these areas  
 9 (indicating).  
 10 So, when these -- you see this herniation very well.  
 11 There's no gap between this herniation here and the spinal cord  
 12 (indicating). So we have four herniations in the cervical spine  
 13 in the neck, 3-4, 4-5, 5-6 and 6-7. They are all pushing back  
 14 towards the spinal cord, and some of them push on the holes the  
 15 neuroforamina up here where the nerve roots come out to the left  
 16 or to the right of the patient (indicating). So we have all  
 17 that going on in the neck as well.  
 18 Q. Doctor, what happens when a herniation abuts the spinal  
 19 cord?  
 20 A. Well, the nerves are in the spinal cord, so when you  
 21 touch a nerve, you can have symptoms. Symptoms can be pain.  
 22 Symptoms can be inability to move a muscle. Symptoms could be  
 23 numbness, and so on. So, whenever there is an abnormal pressure  
 24 to a nerve, you could feel that. That could translate to a  
 25 symptom in your body.  
 26 Q. Does he have that here at the levels in his neck?

1 T. Kolb - by Plaintiff - Direct  
 2 A. This is 21F.  
 3 Q. Thank you, Doctor?  
 4 A. So between the third bone and the fourth bone, you see  
 5 a herniation in that circle right there of disk material coming  
 6 out (indicating), between three and four. There is a disk  
 7 herniation there. This is all just a few millimeters of each  
 8 other in the spine.  
 9 At 4-5, there's again a little bit of herniation coming  
 10 out (indicating). And look how big it is at 5-6 (indicating).  
 11 Look how large the herniation is here. Okay. It's just like  
 12 the back bone elsewhere. This big piece has come out  
 13 (indicating). So that's very abnormal. Here it is here on this  
 14 picture right next to it (indicating). And then at 5-6, again,  
 15 in the circles you see here disk herniations.  
 16 Now, in the cervical spine you actually see -- the  
 17 picture here, this is the brain (indicating). This is the  
 18 bottom of the brain. We are looking at it from here down  
 19 (indicating). This is the bottom of the brain, and this stripe  
 20 coming down is the spinal cord (indicating), and all these  
 21 nerves that come out from the sides to our neck and arm, and so  
 22 on, are in the spinal cord.  
 23 And you could see here that there's a white line in  
 24 front of the spinal cord, and that is spinal fluid, just like in  
 25 the brain we saw spinal fluid. There's spinal fluid in the  
 26 neck. There's spinal fluid anywhere there are nerves in the

1 T. Kolb - by Plaintiff - Direct  
 2 A. He has disk herniations pushing on the spinal cord and  
 3 directly on the spinal cord, specifically greatest at 5-6 and  
 4 C6-7, and to some degree at 3-4 and 4-5 as well. Larger -- the  
 5 large one here, 5-6, you could see how large that one is  
 6 (indicating). And that's pushing on the spinal cord here  
 7 (indicating). And the ones going out more to the side show the  
 8 ones that are herniations that are touching these nerve roots on  
 9 the sides.  
 10 Q. Thank you.  
 11 Anything else with the films that you need to explain  
 12 to the jury?  
 13 A. No.  
 14 Q. Okay. Doctor, assuming that Joseph Barra had been  
 15 working construction for 30 plus years, sustaining wear and tear  
 16 to the spine.  
 17 Assuming that Joseph Barra averaged over 2,000 hours  
 18 per year as a union crane operator in the three years prior to  
 19 the accident.  
 20 Assuming that on August 5th, 2010, he fell from the  
 21 crane he was oiling due to a missing step on a ladder used to  
 22 access his working elevation.  
 23 Assuming that he was taken in an ambulance to New York  
 24 Presbyterian, strapped to a backboard and cervical collar with a  
 25 head bed.  
 26 Assuming that the next day Mr. Barra treated with an

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 2 orthopedist who examined him and ordered him to have a right  
 3 shoulder MRI, a cervical spine MRI and lumbar spine MRI.  
 4 Assuming that five days post accident Mr. Barra treated  
 5 with a neurosurgeon who examined him and diagnosed him with  
 6 cerebral concussion, postconcussion syndrome, as well as  
 7 cervical and lumbar radicular pain syndrome.  
 8 Assuming that Mr. Barra had treated with various  
 9 doctors and therapies for the five and a half years since he  
 10 fell from the defective crane.  
 11 Assuming that in December 2010, four months after the  
 12 accident, Dr. Cushner performed surgery on the injured right  
 13 shoulder.  
 14 Assuming that he has had multiple cortisone injections  
 15 and a surgically repaired right shoulder since the accident.  
 16 Assuming that Mr. Barra has been diagnosed with a  
 17 traumatic brain injury by Dr. Busichio and Dr. Brown.  
 18 Assuming that Dr. Monte Buchsbaum performed a PET scan  
 19 that revealed evidence of a traumatic brain injury in right  
 20 insular cortex of the brain.  
 21 Assuming the three neurologists who actually treated  
 22 Mr. Barra each diagnosing him with cerebral dysfunction caused  
 23 by the fall from the crane.  
 24 Assuming all that I've stated, do you have opinion with  
 25 a reasonable degree of medical certainty as to the competent  
 26 producing cause of Joseph Barra's brain injury?

1 T. Kolb - by Plaintiff - Cross  
 2 right?  
 3 A. I don't think so.  
 4 Q. Okay.  
 5 Did you look at all the radiology studies in this case?  
 6 A. Everything that I looked at I render a report on, so  
 7 only these ones that we discussed.  
 8 Q. Okay.  
 9 Do you normally look at all the radiology studies  
 10 before rendering an opinion as an expert?  
 11 A. If I'm a treating patient -- a treating doctor and I  
 12 have them available to me, I do. Often I'm sent whatever I'm  
 13 sent, and I give my opinion based on what I see.  
 14 Q. Did you look at x-rays of the shoulder from New York  
 15 Presbyterian?  
 16 A. I did not.  
 17 Q. Okay.  
 18 Is there a reason why you did not -- let me withdraw  
 19 that.  
 20 Did you know that he had x-rays of the shoulder?  
 21 A. No, I do not know all of the imaging that this patient  
 22 has had. I only know about the imaging that I was provided.  
 23 Q. All right.  
 24 Well, since you looked -- since you described an MRI of  
 25 the shoulder just a few moments ago, wouldn't you have liked to  
 26 have seen the x-ray that was taken before that? Yes or no?

1 T. Kolb - by Plaintiff - Cross  
 2 A. That would be the fall that he had, the trauma that he  
 3 had.  
 4 Q. And assuming all that I've stated, do you have an  
 5 opinion with a reasonable degree of medical certainty as to the  
 6 competent producing cause of Joseph Barra's right shoulder  
 7 injuries?  
 8 A. The same. Must have been from a trauma.  
 9 Q. And assuming all that I stated, do you have an opinion  
 10 with a reasonable degree of medical certainty as to the  
 11 competent producing cause of Joseph Barra's lumbar spine  
 12 injuries?  
 13 A. The same, from a trauma.  
 14 Q. Assuming all that I've stated, do you have an opinion  
 15 with a reasonable degree of medical certainty as to the  
 16 competent producing cause of Joseph Barra's cervical spine  
 17 injury?  
 18 A. The same, from a trauma.  
 19 Q. Thank you, Doctor.  
 20 MR. MORGAN: Nothing further.  
 21 THE COURT: Cross.  
 22 MR. JOSEPH: Thank you, your Honor.  
 23 CROSS EXAMINATION  
 24 BY MR. MR. JOSEPH:  
 25 Q. Good afternoon, Dr. Kolb. My name is Ron Joseph. I  
 26 represent the defendants in this case. We've never met before;

1 T. Kolb - by Plaintiff - Cross  
 2 A. No.  
 3 Q. No?  
 4 A. Correct.  
 5 Q. Okay.  
 6 Well, I would like you to assume that the radiology --  
 7 that there was an x-ray taken at New York Presbyterian of the  
 8 shoulder, that it was reviewed by Dr. Mennet at New York  
 9 Presbyterian, and he found calcifications on the AP views near  
 10 the joint, and that he said that they might represent old  
 11 glenoid rim fracture, calcified labrum, or more recent fracture  
 12 fragments off the head.  
 13 I would like you to also assume that he found that the  
 14 acromioclavicular and glenohumeral joints were intact.  
 15 Would you agree that the calcific density shown on that  
 16 x-ray is something that occurred prior the date of the x-ray,  
 17 yes or no?  
 18 A. I can't answer that question. It's impossible for me  
 19 to answer that question.  
 20 Q. Because you haven't seen the film?  
 21 A. Because I haven't seen the film, and he, himself, has  
 22 said, in the x-ray that you read to me, and all I know is what  
 23 you are reading to me, that it could be a recent fracture.  
 24 There's no way for me to know whether it's old or new  
 25 when the doctor, himself, says it could be a current fracture.  
 26 Q. Well, did you see evidence of a current fracture on

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1 T. Kolb - by Plaintiff - Cross  
 2 your MRI?  
 3 A. No.  
 4 Q. Okay.  
 5 So you know there's no current fracture; correct?  
 6 A. No. You do take x-rays if you are looking for  
 7 something other than the MRI. So the answer to that question is  
 8 no. The x-rays can provide some information.  
 9 Q. And who provided you with the MRI's that you reviewed?  
 10 A. Law firm of Morgan, Levine and Dolan.  
 11 Q. When you were provided with the MRI's, were you also  
 12 provided with the interpretative reports of the radiologists who  
 13 reviewed those MRI's?  
 14 A. I don't remember. Sometimes they are, sometimes they  
 15 aren't. I don't remember if in this case it was sent to me or  
 16 not.  
 17 Q. Do you have your file with you?  
 18 A. This is my file. This is all I have (indicating).  
 19 Q. I haven't seep it. Can I take a look at what it is?  
 20 A. Yes. This is it, all of this (indicating).  
 21 THE COURT OFFICER: And this (indicating)?  
 22 THE WITNESS: Yes, all of it.  
 23 (Whereupon, there is a brief pause in the  
 24 testimony.)  
 25 Q. So would it be fair to say to say, Doctor, the only  
 26 interpretative reports of these MRI's that you brought to court

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1 T. Kolb - by Plaintiff - Cross  
 2 with you today are your own reports?  
 3 A. Yes.  
 4 Q. And you are not sure whether you ever saw the  
 5 interpretative reports of the radiologists that actually read  
 6 the MRI's; is that correct?  
 7 A. That's correct.  
 8 MR. MORGAN: Objection. Your Honor, they both  
 9 actually read the MRI's.  
 10 THE COURT: Sustained.  
 11 Q. You never --  
 12 THE COURT: Rephrase your question.  
 13 Q. You never read the interpretative reports of the  
 14 treating radiologist; is that correct, yes or no?  
 15 A. Not to my recollection; that is correct.  
 16 Q. Okay.  
 17 And the MRI of the Mr. Barra's right shoulder, which  
 18 was performed on August 11, 2010, it's your opinion there can  
 19 only be one interpretation of that MRI?  
 20 A. I'm here to show you -- I'm not sure what you mean by  
 21 "one." In other words, can you -- if you could explain that a  
 22 little bit better.  
 23 Q. Well that MRI was taken approximately six days after  
 24 the alleged accident; is that right?  
 25 A. I believe so.  
 26 Q. All right.

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1 T. Kolb - by Plaintiff - Cross  
 2 And would you agree that that MRI shows significant  
 3 arthrosis of the acromioclavicular joints, yes or no?  
 4 A. I wouldn't use the word "significant," but I think  
 5 there is some degeneration at the acromioclavicular joints, yes.  
 6 Q. So if the treating radiologist Michael Singer, M.D.  
 7 found significant arthrosis of the acromioclavicular joint, you  
 8 would disagree with him; is that what you are telling us?  
 9 A. To a degree, but I would accept that now, because I do  
 10 believe there is arthritis in the right shoulder, yes.  
 11 Q. Just so we know, arthrosis is another word for  
 12 osteoarthritis; isn't that correct?  
 13 A. Yes.  
 14 Q. Osteoarthritis is a degenerative condition; isn't that  
 15 correct, yes or no?  
 16 A. Yes.  
 17 Q. Okay.  
 18 And when you were testifying just a few minutes ago on  
 19 direct, you didn't tell us about the osteoarthritis in the right  
 20 shoulder, did you?  
 21 A. Right. I was asked to show the important findings,  
 22 right.  
 23 Q. You would agree that Mr. Barra could not have developed  
 24 osteoarthritis in his shoulder in the six days between August 5,  
 25 2010 and August 11, 2010; isn't that correct, yes or no?  
 26 A. Yes, correct.

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1 T. Kolb - by Plaintiff - Cross  
 2 Q. And I would like you to assume that Dr. Singer also  
 3 found the presence of superior and inferior osteophytes.  
 4 Now, you would agree that osteophytes are growths of  
 5 bone which are caused by degenerative conditions; is that  
 6 correct?  
 7 A. Yes.  
 8 Q. You didn't mention that on your direct examination  
 9 either, did you? Yes or no, Doctor.  
 10 A. No, because it's not important to these findings.  
 11 Q. And are you familiar with the term edema; aren't you?  
 12 A. Yes.  
 13 Q. And edema is swelling that is caused by recent injury;  
 14 isn't that correct? Yes or no?  
 15 A. It can be, yes.  
 16 Q. And if there is edema the MRI could show edema; isn't  
 17 that correct? Yes or no?  
 18 A. Yes.  
 19 Q. And in your report of the MRI of the right shoulder,  
 20 you do not indicate that there was any edema; isn't that  
 21 correct? Yes or no?  
 22 A. Yeah, there certainly is no edema there.  
 23 Q. Okay.  
 24 So, if Mr. Barra, on the MRI of August 11, 2010, had  
 25 significant arthrosis of the acromioclavicular joint and  
 26 superior and inferior osteophytes present, and on the x-ray from

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1 T. Kolb - by Plaintiff - Cross  
 2 the day of the alleged incident, um, showed evidence of either a  
 3 glenoid rim fracture calcified labrum, then you would agree that  
 4 Mr. Barra had problems with this shoulder before August 5, 2010;  
 5 isn't that correct? Yes or no?  
 6 MR. MORGAN: Objection, your Honor --  
 7 THE COURT: Overruled.  
 8 MR. MORGAN: -- to problem.  
 9 THE COURT: Overruled.  
 10 A. I don't know what "problem" means. You could have  
 11 arthritis and not feel any pain. You could have arthritis and  
 12 feel pain. Whether the patient had pain or not, you could tell  
 13 me, before the trauma versus after the trauma.  
 14 The fact that there is arthritis there, I agree. But  
 15 it's not near the tear.  
 16 Q. You don't know anything about his medical history of  
 17 the right shoulder, do you?  
 18 A. I don't know much. I know he had -- I believe he had  
 19 surgery.  
 20 Q. After -- but -- after the incident?  
 21 A. Yeah, I believe he had surgery after the MRI.  
 22 Q. Okay.  
 23 And you don't know anything about the medical history  
 24 of his left shoulder; isn't that correct?  
 25 MR. MORGAN: Objection, your Honor. Can we  
 26 approach for a second?

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1 T. Kolb - by Plaintiff - Cross  
 2 THE COURT: Come up.  
 3 (Whereupon, there is a discussion held off the  
 4 record, at the side bar, among the Court, Mr. Morgan and  
 5 Mr. Joseph.)  
 6 THE COURT: You may continue, Mr. Joseph.  
 7 MR. JOSEPH: Thank you, your Honor.  
 8 Q. So would it be fair to say you didn't know anything  
 9 about the medical history of his left shoulder; is that correct?  
 10 A. Correct.  
 11 Q. And you don't know if he had problems with his left  
 12 shoulder, medical problems with the left shoulder prior to that;  
 13 correct?  
 14 A. Correct.  
 15 Q. All right.  
 16 And by the way, what, if any, medical records did you  
 17 review?  
 18 A. The MRI's.  
 19 Q. Just the images themselves?  
 20 A. Correct.  
 21 Q. Not the reports?  
 22 A. I may have had the reports, as said. I don't recollect  
 23 what they said. Or if I did have them, it's possible that they  
 24 were sent with the images. But I read the images and rendered a  
 25 report.  
 26 Q. You didn't review an ambulance report, did you?

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1 T. Kolb - by Plaintiff - Cross  
 2 A. Correct.  
 3 Q. You didn't review any of the hospital records from  
 4 New York Presbyterian?  
 5 A. Correct.  
 6 Q. By the way, you would agree that New York Presbyterian  
 7 is an excellent hospital?  
 8 A. It's a fine hospital.  
 9 Q. Right. It's considered a level one trauma center?  
 10 A. Yes.  
 11 Q. Which is the top level of trauma centers?  
 12 A. Yes.  
 13 Q. And, in fact, you did a residency at the Columbia  
 14 campus?  
 15 A. Yes.  
 16 Q. And that was in -- was that your radiology residency?  
 17 A. Yes.  
 18 Q. Okay.  
 19 So, you don't have any quarrels with what the doctors  
 20 did at New York Presbyterian in the emergency room; right?  
 21 A. There's no way I could answer that question. Anybody  
 22 could say anything. And whether I have a quarrel with them or  
 23 not, I have no idea.  
 24 Q. I'm talking about this case?  
 25 A. I have no idea.  
 26 Q. Okay.

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1 T. Kolb - by Plaintiff - Cross  
 2 Well, Doctor, since we know that prior to the incident  
 3 Mr. Barra had significant arthrosis in the right shoulder,  
 4 osteophytes, calcification, and he also had lack of edema, as  
 5 you pointed out, and we know he may have had problems with the  
 6 left shoulder, you could conclude that whatever you found in the  
 7 right shoulder wasn't due to a recent injury; isn't that right?  
 8 A. That's absolutely incorrect. You left out all the  
 9 major findings.  
 10 Q. Well, Doctor, you were talking about -- major findings,  
 11 you found tears; correct?  
 12 A. A complete rotator cuff tear.  
 13 Q. And what, on the MRI, indicates that that rotator cuff  
 14 tear occurred on August 5, 2010?  
 15 A. As I said before, exactly as I said before, that in and  
 16 of itself, complete rotator cuff tear, if he would not be  
 17 complaining of pain and inability to move his arm before the  
 18 trauma, and he had pain and inability to move his arm after the  
 19 trauma, it would be, within a reasonable degree of medical  
 20 certainty, impossible for him to have that rotator cuff tear  
 21 prior to the trauma, regardless of any arthritis you would see  
 22 anywhere else in the shoulder.  
 23 Q. So, Doctor, what you would expect to see immediately  
 24 after the incident after he's -- when he's seen the hospital, is  
 25 pain in that right shoulder and an inability to move that right  
 26 shoulder; correct?