

Page 142

1 T. Kolb - by Plaintiff - Cross  
 2 A. Those are two of many things that you could find with a  
 3 rotator cuff tear.  
 4 Q. Okay.  
 5 So, Doctor, if they find that at the ER, they are going  
 6 to put you in a sling; right?  
 7 A. ER people would have to answer that.  
 8 Q. So you don't know?  
 9 A. Right.  
 10 Q. So, Doctor, if the -- if he didn't walk out of the  
 11 hospital with a -- withdrawn.  
 12 If the hospital record does not indicate that he had an  
 13 inability to move this right arm, then what you are saying is  
 14 the rotator cuff tear might not have occurred on that day; is  
 15 that correct? Yes or no?  
 16 A. No, it's not correct. It's not at all what I just  
 17 said.  
 18 Q. Well, you just said that if he had -- if he complained  
 19 of pain and couldn't move the right arm --  
 20 A. Or.  
 21 Q. Or couldn't move the right are --  
 22 A. Pain and/or not moving an arm are two of many symptoms  
 23 of rotator cuff tears. Pain, alone, is also a symptom of a  
 24 rotator cuff tear.  
 25 Q. Okay.  
 26 And Doctor, there's no edema on your MRI; right?

Page 143

1 T. Kolb - by Plaintiff - Cross  
 2 A. There's a lot else. There's no edema, but there's a  
 3 lot of other stuff.  
 4 Q. Edema is swelling; correct?  
 5 A. Edema is swelling.  
 6 Q. Swelling is a reflection of recent trauma; isn't that  
 7 correct? Yes or no?  
 8 A. One of many indications. One of many, yes.  
 9 Q. And this MRI was taken six days after the alleged  
 10 accident; correct? August 11th.  
 11 A. Yes.  
 12 Q. All right.  
 13 So that if they were going to be edema in the shoulder  
 14 as a result of the alleged fall, you would expect to see it  
 15 within the six days; is that correct?  
 16 A. That would be incorrect.  
 17 Q. That would be incorrect?  
 18 A. That would be an incorrect statement.  
 19 Q. When would you expect to see it?  
 20 A. Most patients don't have edema who have rotator cuff  
 21 tears from trauma.  
 22 Q. All right.  
 23 You also talked about -- did you look at the CT scan  
 24 from the hospital?  
 25 A. I did not.  
 26 Q. Why not?

Page 144

1 T. Kolb - by Plaintiff - Cross  
 2 A. It wasn't provided to me.  
 3 Q. Were you aware that a CT scan had been done in the  
 4 hospital?  
 5 A. No.  
 6 Q. If you had been aware that there had been a CT scan in  
 7 the hospital, would you have wanted to see that along with the  
 8 MRI that you saw?  
 9 A. It wouldn't alter the MRI findings, no.  
 10 Q. But you came here today and testified to the jury about  
 11 injuries that you say that Mr. Barra sustained.  
 12 A. Only based on what I seen on these films.  
 13 Q. Not -- all right.  
 14 And when you're describing the injuries, wouldn't you,  
 15 as a radiologist, want to see the whole picture, see all the  
 16 radiological studies?  
 17 A. I'm not treating this patient. I've been asked to just  
 18 read these four films. And I told you what's on them and what  
 19 appears to be the cause of them.  
 20 Q. Got it.  
 21 I would like you to assume that there was a CAT scan of  
 22 the cervical spine in New York-Presbyterian Hospital on the day  
 23 of the alleged incident. Okay?  
 24 I would like you to assume that the radiologist, the  
 25 treating radiologist found small disk osteophytes, complex  
 26 causing mild spinal canal stenosis at level C4-5.

Page 145

1 T. Kolb - by Plaintiff - Cross  
 2 Would you agree that that's a degenerative condition?  
 3 A. Yes.  
 4 Q. And would you agree that that could not possibly have  
 5 been caused on the of the alleged accident?  
 6 A. Correct.  
 7 Q. Okay.  
 8 I would like you to assume that the interpreting  
 9 radiologist, the treating radiologist on that same CAT scan  
 10 found at the level C5-6 a small central disk herniation and  
 11 right -- I'm going to mispronounce this word --  
 12 uncontrovertebral joint hypertrophy resulting in mild spinal  
 13 canal stenosis and mild right foraminal stenosis.  
 14 You would agree that that condition is degenerative and  
 15 not caused by the alleged accident, wouldn't you?  
 16 A. Incompletely.  
 17 Q. Well, you have hypertrophy; right?  
 18 A. Hypertrophy is degenerative and long-standing.  
 19 Q. And the spinal canal stenosis is also degenerative in  
 20 long-standing; correct?  
 21 A. Maybe. It could be from the herniation. The  
 22 herniation may not be from the degeneration. It may be from a  
 23 trauma. You don't know that.  
 24 Q. Well, sir, I would like you to further assume that the  
 25 treating radiologist at C6-7 found a small central disk  
 26 herniation, bilateral on covertebral joint hypertrophy and

Page 146

1 T. Kolb - by Plaintiff - Cross  
 2 bilateral facet joint hypertrophy, resulting in mild foraminal  
 3 stenosis.  
 4 Would you agree that that is degenerative?  
 5 A. Part of it is.  
 6 Q. Well, sir, based on that, the hypertrophies are;  
 7 correct?  
 8 A. Yes.  
 9 Q. And you are saying foraminal stenosis is not?  
 10 A. No. I'm saying the herniation may not be.  
 11 Q. May not be, but could be?  
 12 A. Sure.  
 13 Q. Just like at C5-6, the herniation might be?  
 14 A. Yes. Again, that's why you take the patient's symptoms  
 15 into account. Did he have certain symptoms before the trauma?  
 16 Did he have different symptoms after the trauma?  
 17 If he had arthritis for many years and the trauma  
 18 didn't cause any problems, then nothing should be changing with  
 19 this patient.  
 20 Q. Now, I would like you to also assume that the treating  
 21 radiologist found that there was no acute fracture -- and I  
 22 always mispronounce this word -- or spondylolisthesis. Did I  
 23 come close, at least?  
 24 A. It is correct.  
 25 Q. Okay?  
 26 A. And the answer is correct, there isn't either.

Page 147

1 T. Kolb - by Plaintiff - Cross  
 2 Q. And you agree with that conclusion?  
 3 A. I do.  
 4 Q. Okay.  
 5 I would like you to assume that the treating  
 6 radiologist, that the impression was mild multilevel  
 7 degenerative changes as detailed above. Would you agree with  
 8 that?  
 9 A. I can't agree without seeing the films. I can't agree  
 10 with what he's saying. But I'm assuming that there were -- I'll  
 11 go ahead and assume that there were degenerative changes there  
 12 in the CAT scan, yeah.  
 13 Q. You were aware that Mr. Barra had an MRI of the  
 14 cervical spine that you talked about; right?  
 15 A. You just told me, yes.  
 16 Q. From August 2011.  
 17 A. You just read me the results, so I'm aware that he  
 18 had --  
 19 Q. No we were going through a CAT scan. Now I'm talking  
 20 about an MRI?  
 21 A. I'm sorry. So the date of the MRI, sorry? August 10?  
 22 Q. Yes.  
 23 A. Yes.  
 24 Q. Okay. Now, did you --  
 25 (Whereupon, there is a brief pause in the  
 26 testimony.)

Page 148

1 T. Kolb - by Plaintiff - Cross  
 2 (Whereupon, a demonstrative aid was placed on the  
 3 easel.)  
 4 Q. This is cervical?  
 5 A. Yes.  
 6 Q. I'm going to show you Exhibit 21F. Let me just grab my  
 7 notes, Doctor.  
 8 A. Mm-hmm.  
 9 (Whereupon, there is a brief pause in the  
 10 testimony.)  
 11 MR. MORGAN: Can you see it, Doctor, from there?  
 12 MR. JOSEPH: You could come down with the Court's  
 13 permission.  
 14 THE COURT: You may.  
 15 Q. Doctor, C4-5 is where?  
 16 A. (Indicating.)  
 17 Q. Right here (indicating); correct?  
 18 A. Correct.  
 19 Q. Okay.  
 20 And earlier you referred to a term "desiccation";  
 21 correct?  
 22 A. Correct.  
 23 Q. And "desiccation" is when the disk loses water;  
 24 correct?  
 25 A. Correct.  
 26 Q. And that is a degenerative condition; is that correct?

Page 149

1 T. Kolb - by Plaintiff - Cross  
 2 A. Yes.  
 3 Q. C4-5 is -- which one? It's this one, you said  
 4 (indicating)?  
 5 A. Yes.  
 6 Q. Would you agree with the treating -- if I were to tell  
 7 you the treating radiologist found desiccation at that level,  
 8 would you agree with that?  
 9 A. It depends. Did he find desiccation in every single  
 10 level of the cervical and/or thoracic spine as well, because  
 11 they are all identical. So if he said there's one desiccated  
 12 and the others are okay, I would disagree.  
 13 If he said all desiccated, then I would also disagree  
 14 because it they are all not, but that's my reason. They all  
 15 look identical.  
 16 Q. Well, C4-5 is almost black in color; correct?  
 17 A. C4-5 here (indicating) --  
 18 Q. Right.  
 19 A. -- is the exact same color as all of the other disks  
 20 which we are seeing (indicating). Nine disks.  
 21 Q. But if you were to -- you would see more of a light or  
 22 white material in there if there was no desiccation; isn't that  
 23 correct?  
 24 A. You asked me if I agree that C4-5 is desiccated.  
 25 Q. Yes.  
 26 A. If you want to say that C4-5 is desiccated, that means

Page 150

1 T. Kolb - by Plaintiff - Cross  
 2 every single disk in the entire cervical and upper thoracic  
 3 spine is equally desiccated.  
 4 Q. And you disagree with that?  
 5 A. Correct. I don't think everyone single disk in this  
 6 patient's body is desiccated.  
 7 Q. Well, do you agree that there is desiccation in the  
 8 cervical spine?  
 9 A. I don't know, because I think that it's technical in  
 10 the way it looks. And the reason is, because there's no  
 11 different in appearance. I doubt that these are desiccated. I  
 12 doubt it.  
 13 Q. So what you are saying -- okay.  
 14 I would like you to assume that Dr. Singer, the  
 15 treating radiologist, also found that C5, C6 had desiccation.  
 16 You would disagree with that as well?  
 17 A. Sure. You would have to say 2-3, which is not  
 18 involved, is also desiccated. Nobody is claiming it is, and it  
 19 looks no different than 4-5 or 5-6. They are identical. We are  
 20 talking about the brightness in the disks. So of course I would  
 21 disagree.  
 22 Q. Okay.  
 23 And I would like you to assume that Dr. Singer, the  
 24 treating radiologist, found that there was, at C6-7, ventral  
 25 osteophyte formation with disk desiccation. Do you agree or  
 26 disagree with that?

Page 151

1 T. Kolb - by Plaintiff - Cross  
 2 A. I agree. That's what we were talking about in the  
 3 front, which is nothing to do with the herniations.  
 4 Q. Okay. And C5-6, you don't see desiccation?  
 5 A. I see them being equal, every disk is equal. If one is  
 6 desiccated, all nine are desiccated, and I don't think that's  
 7 the case.  
 8 Q. Okay.  
 9 The herniations are at this level you are saying  
 10 (indicating), which is what, C2-3?  
 11 A. This down here is C6-7 (indicating).  
 12 Q. And this is the herniation?  
 13 A. Yes.  
 14 Q. And I'm going to refer you to Exhibit 24. You talked  
 15 about the annulus; right?  
 16 A. Yes.  
 17 Q. And the annulus is, for lack of a better term, the skin  
 18 or the fiber that is on the outside of the disk?  
 19 A. Yes.  
 20 Q. All right.  
 21 And you are telling us that there's a torn annulus at  
 22 C6-7?  
 23 A. Yes.  
 24 Q. And would you agree that a torn annulus can heal over  
 25 time?  
 26 A. No.

Page 152

1 T. Kolb - by Plaintiff - Cross  
 2 Q. Never?  
 3 A. Once the annulus is torn, it's torn. That's right.  
 4 Correct.  
 5 Q. Now --  
 6 THE COURT: Do you still need the witness to stand?  
 7 MR. JOSEPH: No. He could sit. I'm sorry, Doctor.  
 8 I wasn't trying to be rude.  
 9 Q. In your interpretation of the MRI of the cervical spine  
 10 from August 2010, you found osteophytes and disk protrusions at  
 11 C5-6 and C6-7; correct?  
 12 A. Anteriorly, just like you read to me before, which is  
 13 the same as ventral. In other words, it's not on the side of  
 14 the herniations; that's correct.  
 15 Q. Okay.  
 16 Well, that means that you agree that he had a  
 17 preexisting issue at C5-6 and C6-7 prior to August 5, 2010;  
 18 correct?  
 19 A. Yes. Not in the area of the herniations. He had a  
 20 preexisting condition, yes.  
 21 (Continued on the next page.)  
 22  
 23  
 24  
 25  
 26

Page 153

1 Dr. Kolb - by Plaintiff - Cross  
 2 CROSS-EXAMINATION (CONTINUING)  
 3 BY MR. JOSEPH:  
 4 Q And at C3-4 you found that the neuroforamina and  
 5 exiting nerve roots were patent; isn't that correct?  
 6 A Yes, unremarkable.  
 7 Q That means they are good.  
 8 A "Patent" means that they're not pushed in. "Patent"  
 9 means they are open. "Patent" means open.  
 10 Q And C4-5, they were also unremarkable, correct?  
 11 A Correct.  
 12 Q You would agree, sir, that it would not be uncommon  
 13 for someone who is 55 years old at that time who was a  
 14 construction worker to have degenerative changes in the spine?  
 15 A Yes, of course I agree.  
 16 Q And if someone were to herniate a disc in their spine,  
 17 how long would it take for them to feel pain?  
 18 A It could be instantaneous. It is possible. It  
 19 depends how big and what it is pushing on.  
 20 Q Well, you said you never read the hospital records,  
 21 right?  
 22 A That's correct.  
 23 Q So are you aware that Mr. Barra did not complain of  
 24 any pain in the lumbar spine at the hospital?  
 25 A No.  
 26 Q Are you aware that he did not undergo any radiological

Page 154

1 Dr. Kolb - by Plaintiff - Cross  
 2 studies of the lumbar spine at the hospital?  
 3 A No.  
 4 Q And you haven't read the lumbar spine interpretation  
 5 by Dr. Singer at Empire Open MRI, right?  
 6 A Correct, as far as I recall.  
 7 Q I would like you to assume that Dr. Singer, the  
 8 treating radiologist, found a loss of disc height at L2-L3?  
 9 A Yes, I agree with that.  
 10 Q And you would agree, doctor, that that is a  
 11 degenerative condition; isn't that correct?  
 12 A Yes, I agree. I pointed that out. I agree.  
 13 Q And I would like you to further assume -- well, that  
 14 means that particular condition was not caused by the alleged  
 15 accident of August 5, 2010 correct?  
 16 A Yes.  
 17 Q I would like you to further assume Dr. Singer, the  
 18 treating radiologist, found at L2-3 ventral osteophyte  
 19 formation; would you agree with that?  
 20 A I agree. We pointed that out. I agree.  
 21 Q That means bony overgrowths, right?  
 22 A On the other side of the herniation, yes.  
 23 Q And that did not occur in the six days after the  
 24 accident, correct?  
 25 A Correct.  
 26 Q Those osteophytes are a degenerative condition; is

Page 155

1 Dr. Kolb - by Plaintiff - Cross  
 2 that correct?  
 3 A Correct.  
 4 Q I would like you to assume that Dr. Singer also found  
 5 at L3-4 ventral osteophyte formation; you would agree with that  
 6 as well?  
 7 A Yes.  
 8 Q That is also a degenerative condition?  
 9 A Correct.  
 10 Q And at L3-4 he also found mild facet hypertrophy?  
 11 A Yes.  
 12 Q That's also a degenerative condition?  
 13 A Yes.  
 14 Q That did not occur in the six days after the accident?  
 15 A Correct.  
 16 Q I would like you to assume that at L4-5 Dr. Singer  
 17 found bilateral facet hypertrophy. That's also a degenerative  
 18 condition; is that correct?  
 19 A Correct.  
 20 Q Do you agree with that conclusion as well?  
 21 A I do.  
 22 Q I would like you to further assume that Dr. Singer  
 23 found a loss of disc height at L5-S1. Do you agree with that?  
 24 A No. Only at 2-3 and 4-5, but I wouldn't quibble about  
 25 that with everything else going on.  
 26 Q Well, if he had a loss of disc height at L5-S1, that

Page 156

1 Dr. Kolb - by Plaintiff - Cross  
 2 would also be degenerative condition; isn't that right?  
 3 A Yes. If he did, it would be.  
 4 Q And you found loss of disc height at L4-5?  
 5 A Yes.  
 6 Q And that's certainly a degenerative condition?  
 7 A Yes.  
 8 Q And are you aware that Mr. Barra underwent a CAT scan  
 9 of the head at the hospital; yes or no?  
 10 A I am not aware of his other imaging studies.  
 11 Q But you read the first MRI of the brain from Empire  
 12 which was on August 12, 2010, right?  
 13 A Yes.  
 14 Q Which was seven days after the alleged accident?  
 15 A Yes.  
 16 Q And you said you didn't review the report of that  
 17 treating radiologist either, correct?  
 18 A I may have. I don't recall.  
 19 Q Okay.  
 20 Well, if Dr. Singer who was the treating  
 21 radiologist on that MRI said that he found a retention cyst at  
 22 the right maxillary sinus, would you disagree with that?  
 23 A No.  
 24 Q And what that is indicative of a possible sinus  
 25 infection, right?  
 26 A Yes. It is in my report too. I agree with that.

Page 157

1 Dr. Kolb - by Plaintiff - Cross  
 2 Q That is not indicative of any brain injury, is it?  
 3 A No, certainly not.  
 4 Q You also saw -- I think you called it a polyp or a  
 5 cyst?  
 6 A Retention cyst, yes.  
 7 Q Okay.  
 8 And when you looked at that MRI you interpreted  
 9 something which could be either posttraumatic in origin or a  
 10 nonspecific small vessel disease; is that correct, yes or no?  
 11 A Yes.  
 12 Q And are you aware, doctor, that Mr. Barra has suffered  
 13 from hypertension; yes or no?  
 14 A No.  
 15 Q Can hypertension lead to small vessel disease; yes or  
 16 no?  
 17 A Yes.  
 18 Q Small vessel disease is not something you would see  
 19 from acute trauma; isn't that correct, yes or no?  
 20 A Correct.  
 21 Q Now, when you told us about the MRIs and you told us  
 22 about that spot which could be indicative of nonspecific small  
 23 vessel disease, you told us you thought it was from a traumatic  
 24 brain injury, right?  
 25 A No, I didn't say that. I said given appropriate  
 26 clinical correlation, whether the patient had --