

Understanding the “Eggshell Plaintiff” Doctrine and Rule

WHAT IS THE PROPER PROCEDURE to follow in this scenario: A client is involved in a low-impact, rear-end automobile collision and suffers from severe neck pain. The property damage is minor, but the client has received physical therapy and several epidural injections, with medical specials totaling \$175,000. After filing a complaint and determining the available policy limits, a settlement demand of \$1 million is made. However, it is learned during discovery that the client sustained a neck injury at the gym four years ago and underwent three weeks of physical therapy. The defense subpoenas physical therapy records, and the discharge report mentions residual pain, while X-rays reveal degenerative changes in the cervical spine.

The defense counsel learns about this prior injury and counters the million-dollar demand with a \$50,000 offer, arguing preexisting condition and that neck surgery was inevitable. He or she also provides a reminder of the property damage photographs that show cosmetic bumper damage. You counter that the client is an eggshell plaintiff entitled to full compensation for damages, but the defense counsel stands firm on his offer.

The “eggshell plaintiff” rule states that a tortfeasor is responsible for all of the damages that his or her negligence causes another and that the tortfeasor will not be exonerated from liability simply because a preexisting condition makes the plaintiff more susceptible to injury.¹ However, courts have been equally clear that defendants are not responsible for compensating the eggshell plaintiff for a preexisting condition, except when the subject incident causes new pain or aggravates the preexisting condition.

An attorney should address several matters when litigating a case with a client who has a preexisting condition. First, the attorney should discuss the client’s medical history at the outset of representation. Clients sometimes fail to reveal a prior gym accident, a fall at a restaurant, or even having received chiropractic care for a stiff back. It may be intentional or a lapse in memory. The attorney should make it clear to the client that prior medical issues should not hurt the case, and may even bolster it. When prior medical issues are completely unrelated to the plaintiff’s claims and do not factor into the damages sought, the attorney should bar discovery or admission of the protected information in the interests of the client’s privacy.

Second, the attorney should obtain all of the relevant medical records and ensure that the client’s treating doctors are aware of the preexisting condition. While it is bad for the attorneys to be unaware of the client’s medical history, it is even worse for doctors to be unaware. Treating doctors, especially surgeons, must have all relevant medical records so they can quantify the aggravation of the preexisting injury while drafting reports or progress notes, and eventually testify to those opinions in a deposition or at trial. Expert medical testimony is necessary to demonstrate the degree to which the prior injury was aggravated by the subject incident and to address the

effects on the eggshell plaintiff’s overall health.

Cases involving unresolved preexisting conditions become complex since the insurance adjuster will try to argue that all of the client’s injuries and pain are attributable to the earlier incident. Insurance adjusters are also suspicious of low-impact cases in which the injuries claimed are beyond soft-tissue. The only way for the plaintiff to be able to resist this defense, and to obtain full compensation for injuries currently sustained, is to have all the relevant medical information in possession when the claim is being prosecuted. Thus, all the medical records and diagnostic studies should be obtained as soon as possible.

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Finally, if the case goes to trial and the judge decides that the plaintiff is an “eggshell plaintiff,” the judge may request, and the plaintiff’s attorney should ensure, that Judicial Council of California Civil Jury Instructions (CACI) 3928 (eggshell plaintiff doctrine) and 3927 (aggravation of preexisting condition) are read to the jury, as these jury instructions work in tandem.

The latter instruction, CACI 3927, holds defendants responsible for aggravating preexisting injuries of a plaintiff, and for any physical or emotional condition that was made worse by the defendant’s wrongful conduct. The former, CACI 3928, states that a plaintiff must be compensated for all damages caused by the wrongful conduct of the defendant, even if the plaintiff was more susceptible to injury than a normally healthy person would have been. It is important to ensure that both instructions are read so that the jury is forced to consider the plaintiff’s susceptibility.

It is important for attorneys to understand how to litigate a case involving a preexisting condition, as well as how the eggshell plaintiff doctrine and rule on preexisting condition work together during settlement negotiations and at trial. Damages should not be sacrificed because of a preexisting condition when there is competent evidence that the condition was aggravated from the subject incident. Thus, it is essential to secure the client’s past medical records and relevant diagnostic studies as soon as possible so the attorney can properly litigate the case and provide the treating doctors and consultants with all relevant evidence. Being forewarned is being forearmed. ■

¹ Rideau v. Los Angeles Transit Lines, 124 Cal. App. 2d 466 (1954).

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