

NEW MEXICO INJURY ATTORNEY BLOG

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Walking on Eggshells in New Mexico Personal Injury Cases

In many personal injury cases, the issue of preexisting injuries will be front and center in the calculation of damages. Many times, the defendant who is often represented by an insurance company will argue that plaintiff's injuries preexisted the accident and therefore is no the responsibility on the defendant. Liability and damages often turn on the findings surrounding preexisting conditions.

Defendants are not responsible for preexisting conditions. After all, there must be causation of harm to establish liability and causation cannot be shown for preexisting harms. However, defendants are responsible for incremental harm. The law in New Mexico has been long established that a defendant is liable for any harm done even if the injured person was more susceptible to that harm as a result of a preexisting condition.

This rule is often called the eggshell plaintiff rule meaning that if you negligently hit a person in the head that happens to have a exceptionally fragile skull, you are fully responsible for all harm caused by your negligence. This is the case even though you could not possibly have foreseen such a fragile skull or the terrible damages that might result from your negligence. It is often said that the defendant takes the plaintiff as he finds him.

The rule is reflected in New Mexico Uniform Jury Instruction 13-1802 where it states in part:

If you find that, before any injury in this case, plaintiff was already impaired by a physical or emotional condition, plaintiff is entitled to compensation for the aggravation or worsening of the condition, but not for elements of damages to the extent they were already being suffered. However, damages are to be measured without regard to the fact plaintiff may have been unusually susceptible to injury or likely to be harmed. The defendant is said to "take the plaintiff as he finds [him] [her]," meaning that the defendant, if liable, is responsible for all elements of damages caused by the defendant's conduct even if some of the plaintiff's injury arose because the plaintiff was unusually susceptible to being injured.

The possible tension between the parties becomes clear when reading the UJI 13-1802. On the one hand, the defendant will try to show that the injuries were entirely preexisting, and there was no worsening of those injuries by the negligent conduct of the defendant. The plaintiff is generally forced to acknowledge the prior injuries since there is

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generally no shortage of medical records on point. However, the plaintiff will argue that the injuries were made worse by the accident. Assuming liability has been established, the outcome of these cases depends on how this issue is resolved.

The parties will often find some middle ground through settlement. However, there are cases where there simply is no middle ground due to honest differences of opinion. There are also many cases where one or the other parties simply has taken an unreasonable and unrealistic position. These are the cases that move forward to trial. The risks of a jury trial are great to both sides making careful and intelligent case evaluation extremely important. This means trying to figure out how a jury will see the case which is easier said than done. Miscalculations will and often do result in tremendous costs to one or the other parties.

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