



# Humpty Dumpty Goes to Court

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Humpty Dumpty's legacy lives on in our legal system, in the concept of the "eggshell plaintiff". This term refers to the plaintiff whose injuries are much worse than those of a typical person on account of some predisposing factor (the "thin skull"). While this concept has been commonplace in tort law for some time, it recently has found its way into employment law. In the view of some courts, therefore, the fact that a plaintiff may have experienced prior traumas may affect the value of the plaintiff's emotional damage claim. The more recent trend among courts, however, has been to hold the employer liable for *all* of the plaintiff's emotional harm unless a clear apportionment can be made to other causes. When faced with an "eggshell plaintiff" assertion, therefore, the first step must be to determine whether the claim is made with respect to liability or damages.

As can be seen, application of the "eggshell plaintiff" concept in employment litigation is hardly simple. While plaintiffs are likely to invoke the "eggshell plaintiff" notion as a means of making a viable claim out of weak facts, careful analysis must be conducted to determine if this concept really should apply.

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