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I Am Having a Flashback ... All the Way to the Bank: The Application of the Thin Skull Rule to Mental Injuries - Poole v. Copland, Inc.

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NOTE

I Am Having a Flashback. . .All the Way to the Bank: The Application of the "Thin Skull" Rule to Mental Injuries—*Poole v. Copland, Inc.*

INTRODUCTION

The "thin skull" rule[1] is a concept that has been applied in North Carolina tort cases for over thirty years.[2] Previously, the "thin skull" rule was only applied in North Carolina cases involving physical injuries.[3] However, on May 8, 1998, the North Carolina Supreme Court in *Poole v. Copland, Inc.*[4] affirmed a North Carolina Court of Appeals ruling,[5] which provided that the "thin skull" rule may be applied to mental injury cases. This is a case of first impression in North Carolina.

In *Poole*, a former employee brought an action against her former co-worker alleging intentional and negligent infliction of emotional distress.[6] In addition, the employee brought suit against her former employer for ratification of her co-worker's conduct, and the employer's imputed liability with respect to the co-worker's sexual harassment.[7] The plaintiff recovered actual and punitive damages resulting from a flashback of repressed memories of childhood sexual abuse when aggravated by the on-the-job sexual harassment.[8] The

1. The "thin skull" rule provides that if the defendant's "misconduct amounted to a breach of duty to a person of ordinary susceptibility, he is liable for all damages suffered by plaintiff notwithstanding the fact that these damages were unusually extensive because of the peculiar susceptibility [of the plaintiff]." Lockwood v. McCaskill, 262 N.C. 663, 670, 138 S.E.2d 541, 546 (1964) (quoting W.E. Shipley, Annotation, *Comment Note. —Right to Recover for Emotional Disturbance or its Physical Consequences, in the Absence of Impact or other Actionable Wrong*, 64 A.L.R.2d 100, 131 n. 12 (1959).

2. The North Carolina Supreme Court first applied the "thin skull" rule in Lockwood v. McCaskill, 262 N.C. 663, 138 S.E.2d 541 (1964).

3. *See Lockwood*, 262 N.C. at 670, 138 S.E.2d at 546 (1964); Potts v. Howser, 274 N.C. 49, 54, 161 S.E.2d 737, 742 (1968); Holtman v. Reese, 119 N.C. App. 747, 749, 460 S.E.2d 338, 341 (1995); Casey v. Fredrickson Motor Express Corp., 97 N.C. App. 49, 53, 387 S.E.2d 177, 179 (1990); Ballenger v. Burris Indus. Inc., 66 N.C. App. 556, 569, 311 S.E.2d 881, 889 (1984); Lee v. Regan, 47 N.C. App. 544, 550, 267 S.E.2d 909, 912 (1980); Redding v. F.W. Woolworth Co., 9 N.C. App. 406, 409, 176 S.E.2d 383, 385 (1970).

4. Poole v. Copland, Inc., 348 N.C. 260, 498 S.E.2d 602 (1998).

5. Poole v. Copland, Inc., 125 N.C. App. 235, 481 S.E.2d 88 (1997), *aff'd*, 348 N.C. 260, 498 S.E.2d 602 (1998).

6. *Id.* at 236, 481 S.E.2d at 89.

7. *Id.*

8. *Poole*, 348 N.C. at 264, 498 S.E.2d at 604.

court allowed the plaintiff to recover the full extent of her damages due to her peculiar susceptibility to matters that cause severe emotional distress.[9] Thus, for the first time, the North Carolina Supreme Court recognized the application of the "thin skull" rule in mental injury cases.

Compared to a physical injury that can be objectively diagnosed and treated, a mental injury may be completely subjective in its diagnosis, origin, and treatment. As a result, this new application of the "thin skull" rule to mental injury cases may create a flood of claims alleging that present outrageous conduct has caused a past traumatic event to resurface. Due to the greater damage to the plaintiff caused by the exacerbation of the past trauma, the damages awarded by juries may be higher. Increased damages awards may also attract plaintiffs with potentially frivolous and fraudulent claims of traumatic flashbacks. As a result, the North Carolina Supreme Court should establish boundaries and limits in the "thin skull" rule's application to pre-existing mental injuries.

This note will first discuss the opinion of the North Carolina Supreme Court in *Poole v. Copland, Inc.*, focusing on the recognition of a new application of the "thin skull" rule. Part II will trace the history and application of the "thin skull" rule in North Carolina and other jurisdictions. Finally, this note will analyze the *Poole v. Copland, Inc.* decision and how it may affect the torts of intentional and negligent infliction of emotional distress in North Carolina and tort law in general. In addition, the decision's effects on the practitioner of law in North Carolina will be discussed.

THE CASE

In *Poole v. Copland, Inc.*, the plaintiff, Wendy Poole, sued John Haynes for intentional infliction of emotional distress.[10] She also brought an action against Copland, Inc., her former employer, for ratification of Haynes' conduct and its imputed liability with respect to Haynes' sexual harassment.[11] Poole testified that throughout a one-year period, while working for Copland, Haynes intimidated and sexually harassed her.[12] On many occasions, Haynes made obscene sexual suggestions and gestures toward the plaintiff.[13] As a result, Poole testified that she could not eat or sleep, and suffered from intestinal

9. *Id.*
10. *Poole*, 125 N.C. App. at 236, 481 S.E.2d at 89.
11. *Id.*
12. *Poole*, 348 N.C. at 261, 498 S.E.2d at 603.
13. *Id.* at 261-62, 498 S.E.2d at 603.

problems.[14] Moreover, Poole's relationship with her husband became strained.[15] Poole reported Haynes' behavior and harassment to supervisors on numerous occasions, but the claims were not investigated.[16]

Poole also testified to years of sexual abuse as a child and teenager.[17] This past sexual abuse included: sexual molestation by a neighbor when she was nine, giving birth to an illegitimate child at fifteen, physical abuse by her drug-addict husband whom she married at sixteen, and molestation by her uncle at the age of eighteen.[18] Poole's father, an alcoholic, physically abused her during childhood.[19] During a two-week period, a friend of her father's bound her with duct tape, locked her in a closet, and brutally raped her.[20]

Two psychiatrists and a psychologist testified that Haynes' conduct led to Poole's post-traumatic stress disorder and dissociative disorder.[21] A dissociative disorder occurs when a person who has suffered a bad experience does not store the bad experience as a memory, but rather splinters the memory into several parts in order to not remember the experience.[22] A subsequent traumatic event, such as sexual harassment in the workplace, may cause the splintered parts to reunite, and the person remembers the prior bad experience as a flashback.[23]

At the trial level in the Superior Court of Alamance County, the jury found in favor of Poole on the issue of intentional infliction of emotional distress.[24] The jury awarded $2,000 actual damages and $5,000 punitive damages against Haynes and $50,000 actual damages and $250,000 punitive damages against Copland.[25] Copland appealed the ruling.

The North Carolina Court of Appeals disagreed with Copland's contention that the "thin skull" rule applied only to physical and not mental injuries and saw no reason to treat mental injuries any differently than physical injuries.[26] The court of appeals held that the "thin skull" rule applied to tortious conduct that exacerbated a pre-existing mental condition.[27] However, the court of appeals ordered a new trial

14. *Id.* at 262, 498 S.E.2d at 603.
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.* at 262-63, 498 S.E.2d at 603.
20. *Id.*
21. *Poole,* 125 N.C.App. at 238-39, 481 S.E.2d at 88-89.
22. *Poole*, 348 N.C. at 263, 498 S.E.2d at 603-04.
23. *Id.*
24. *Poole*, 125 N.C.App. at 235, 481 S.E.2d at 88.
25. *Id.*
26. *Id.* at 244, 481 S.E.2d at 94.
27. *Id.*

based on the trial court's improper jury instructions, which unfairly prejudiced the employer.[28] After granting discretionary review, the Supreme Court of North Carolina upheld the ruling on the "thin skull" doctrine, but reversed on the issue of jury instructions, holding that the instructions were proper.[29]

BACKGROUND

An English court first articulated the term "thin skull" or "eggshell skull" in 1901.[30] However, the doctrine's use in the United States preceded its designation as the "thin skull" rule in Great Britain. In *Spade v. Lynn & B.R.R.*,[31] the court stated that "the defendant must answer for the actual consequences of that wrong to her *as she was*, and cannot cut down her damages by showing that the effect would have been less upon a normal person."[32] The "thin skull" doctrine has been in wide use and acceptance throughout this century, and nearly all legal texts or treatises[33] and jurisdictions[34] have accepted and applied the "thin skull" rule in some form or manner to negligence cases.

There is almost universal agreement that a defendant is liable for the full extent of the victim's damages when her negligence aggravates a pre-existing physical condition.[35] In other words, the defendant takes the plaintiff as she finds him.[36] However, not all legal authorities or jurisdictions have applied the "thin skull" doctrine when the pre-existing condition consists of a mental injury or disorder.[37]

28. *Id.* at 245, 481 S.E.2d at 94.

29. *Poole*, 348 N.C. at 265-66, 498 S.E.2d at 605.

30. Dulieu v. White & Sons, 2 K.B. 669, 679 (1901).

31. 52 N.E. 747 (Mass. 1899).

32. *Id.* at 748 (emphasis added) (citing Braithwaite v. Hall, 46 N.E. 398 (Mass. 1897)).

33. *See, e.g.*, RESTATEMENT (SECOND) OF TORTS § 461 (1979); 57A AM. JUR. 2d *Negligence* § 500 (1989); 22 AM. JUR. 2d *Damages* § 281 (1988); W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 43, at 291-92 (5th ed. 1984); W. PROSSER, LAW OF TORTS 261-62 (4th ed. 1971).

34. *See* Schafer v. Hoffman, 831 P.2d 897 (Colo. 1992) (holding that a defendant must accept the victim as he or she finds him); Benn v. Thomas, 512 N.W.2d 537 (Iowa 1994) (holding that "thin skull" doctrine applied to the aggravation of coronary heart disease); Walton v. William Wolf Baking Co., 406 So. 2d 168 (La. 1981) (holding that defendant was responsible for compensating victim's predisposition toward neurosis); Packard v. Whitten, 274 A.2d 169 (Me. 1971) (holding that declining health exacerbated by automobile accident); Walsh v. Snyder, 441 A.2d 365 (Pa. Super. Ct. 1981) (reversing trial court since it did not apply the "thin skull" doctrine); Bigley v. Craven, 769 P.2d 892 (Wyo. 1989) (holding that trial court erred by not instructing the jury on the "thin skull" doctrine).

35. KEETON ET AL., *supra* note 32, § 43, at 291.

36. *See* Lockwood v. McCaskill, 262 N.C. 663, 138 S.E.2d 541 (1964).

37. *See* RESTATEMENT (SECOND) OF TORTS § 461 (1979) ("The negligent actor is subject to liability for harm to another although a physical condition of the other which is neither known nor should be known to the actor makes the injury greater."); Munn v. Algee, 924 F.2d 568, 576 (5th Cir. 1991) (citations omitted) ("[T]he [thin skull] principle has been applied only to pre-existing *physical* injuries. We decline the invitation to extend its scope, absent substantial indication that the state courts of Mississippi would do so.").

While all do not agree, some legal texts and commentators specifically state that aggravated or exacerbated mental conditions, in addition to physical conditions, should be included in those injuries in which the "thin skull" doctrine is applied.[38] Also, numerous federal and state jurisdictions have applied the "thin skull" rule to mental injuries.[39] Louisiana has been especially proactive in applying pre-existing mental conditions or illnesses to the doctrine. In *Walton v. William Wolf Baking Co.*,[40] the victim was predisposed toward neurosis, and "his reaction to the injury was more severe than that of most people."[41] The Louisiana Supreme Court held that this did not lessen the defendant's "responsibility to compensate [the victim] for all the consequences of the accident."[42] Also in *Thames v. Zerangue*,[43] the Louisiana Supreme Court held that the "thin skull" rule was applicable to a plaintiff with a history of underlying psychological problems, which were aggravated by the accident in the case.[44]

In an extreme application of the rule to mental injury, the Louisiana Court of Appeals in *Giamanco v. EPE, Inc.*[45] held that a beauty salon patron could recover damages for aggravation of a pre-existing psychiatric condition.[46] The plaintiff developed a post-traumatic stress disorder after her hair was damaged by poor treatment at the salon.[47] Testimony indicated that the victim was fixated on her hair and especially sensitive to her physical appearance.[48] The court held that her resulting mental problems were caused by the damage done to her

38. *See* 4 FOWLER V. HARPER ET AL., THE LAW OF TORTS § 20.3, at 123 n.25 (2d ed. 1986) (interpreting the thin skull doctrine to entail the victim's physical, mental, or financial condition); 22 AM. JUR. 2d *Damages* § 281 (1988) (a person is entitled to full compensation although his injuries may have been aggravated by pre-existing mental conditions).

39. *See generally* McKinnon v. Kwong Wah Restaurant, 83 F.3d 498 (1st Cir. 1996) (applying the "thin skull" rule to pre-existing mental injuries); Brackett v. Peters, 11 F.3d 78, 81 (7th Cir. 1993) ("It has long been the rule in tort law . . . not only that the tortfeasor takes his victim as he finds him, but also that psychological vulnerability is on the same footing with physical."); Stoleson v. United States, 708 F.2d 1217 (7th Cir. 1983) (holding that victim's vulnerability because of psychological pre-existing condition rather than physical is irrelevant); Steinhauser v. Hertz Corp., 421 F.2d 1169 (2d Cir. 1970) (holding that a young girl predisposed to schizophrenia could fully recover damages for the full-blown psychosis resulting from an accident); Reck v. Stevens, 373 So. 2d 498, 502 (La. 1979) (holding defendants responsible for injuries accentuated by pre-existing emotional instability); Therriault v. Swan, 558 A.2d 369 (Me. 1989) (recognizing a special "eggshell psyche" rule for pre-existing emotional injuries); Richman v. Berkley (Dept. of Public Works), 269 N.W.2d 555 (Mich. Ct. App. 1978) (holding that accident resulted from aggravation of plaintiff's pre-existing mental problems).

40. 406 So. 2d 168 (La. 1981).

41. *Id.* at 175.

42. *Id.*

43. 411 So. 2d 17 (La. 1982).

44. *Id.* at 19-20.

45. 619 So. 2d 842 (La. Ct. App. 1993).

46. *Id.* at 846.

47. *Id.* at 844.

48. *Id.* at 845.

hair.[49] The court refused to distinguish pre-existing physical conditions from mental conditions, and stated that it is well-settled law in Louisiana that a defendant takes a victim as he finds her.[50]

The manner in which Louisiana applies pre-existing mental conditions or injuries[51] differs from many of the states that do recognize mental injuries, at least in regard to actions for emotional distress.[52] In these other jurisdictions, recovery for intentional or negligent infliction of emotional distress would be allowed so long as the mental injury suffered is of "sufficient magnitude to cause a normally constituted person to be unable to adequately cope."[53] Conversely, in Louisiana a person can recover for emotional distress even if a person with a normal sensitivity to the situation would not have been affected.[54] This allows a supersensitive person to recover damages from the defendant.

The North Carolina Supreme Court has applied the "thin skull" rule to physical injuries for the last thirty years.[55] However, compared to other jurisdictions, North Carolina has applied the "thin skull" rule sparingly at the appellate level. There have been few cases decided by the North Carolina appellate courts prior to *Poole v. Copland, Inc.*,[56] which have utilized the doctrine.[57]

Although North Carolina had not previously applied the "thin skull" doctrine to pre-existing mental injuries, the courts had not disallowed its application. Instead, when the appellate courts of North Carolina utilized the "thin skull" rule in earlier cases, it was only necessary to apply the doctrine to pre-existing physical injuries.[58] In *Potts*

49. *Id.* at 846.

50. *Id.* at 845.

51. *See id.* at 844.

52. *See* Theriault v. Swan, 558 A.2d 369 (Me. 1989) (recognizing a special "eggshell psyche" rule for pre-existing emotional injuries); Gammon v. Osteopathic Hosp. of Me., Inc., 534 A.2d 1282 (Me. 1988) (holding that "eggshell psyche" rule does not apply to the supersensitive plaintiff); Hunsley v. Giard, 553 P.2d 1096 (Wash. 1976) (disallowing damages for emotional distress where plaintiff is exceptionally sensitive).

53. Virginia E. Nolan & Edmund Ursin, *Negligent Infliction of Emotional Distress: Coherence Emerging from Chaos*, 33 HASTINGS L.J. 583, 621 n.188 (1982).

54. Giamanco v. EPE, Inc., 619 So. 2d 842, 844 (La. Ct. App. 1993).

55. Lockwood v. McCaskill, 262 N.C. 663, 138 S.E.2d 541 (1964).

56. 348 N.C. 260, 498 S.E.2d 602.

57. *See* Lockwood v. McCaskill, 262 N.C. 663, 138 S.E.2d 541 (1964); Potts v. Howser, 274 N.C. 49, 161 S.E.2d 737 (1968); Holtman v. Reese, 119 N.C. App. 747, 460 S.E.2d 338 (1995); Casey v. Fredrickson Motor Express Corp., 97 N.C. App. 49, 387 S.E.2d 177 (1990); Ballenger v. Burris Indus. Inc., 66 N.C. App. 556, 311 S.E.2d 881 (1984); Wyatt v. Gilmore, 57 N.C. App. 57, 290 S.E.2d 790 (1982); Lee v. Regan, 47 N.C. App. 544, 267 S.E.2d 909 (1980); Hinson v. Sparrow, 25 N.C. App. 571, 214 S.E.2d 198 (1975); Redding v. F.W. Woolworth Co., 9 N.C. App. 406, 176 S.E.2d 383 (1970). All of the preceding cases applied the "thin skull" doctrine in North Carolina to pre-existing physical injuries.

58. *See* cases cited *supra* note 57.

v. Howser,[59] the North Carolina Supreme Court, while utilizing the "thin skull" rule to a pre-existing physical injury, stated that defendants are liable for aggravating both pre-existing physical and mental conditions.[60] Numerous North Carolina cases have cited *Potts* when applying the "thin skull" rule.[61] Thus, North Carolina has recognized the application of the doctrine to mental injuries in *dicta* for many years. However, *Poole* was the first case holding that the rule applied to mental conditions.

ANALYSIS

The North Carolina Supreme Court's holding in *Poole v. Copland, Inc.*[62] is a new application of the "thin skull" rule in North Carolina. Although the ruling in *Poole* is not a unique application of the doctrine in the United States,[63] the "thin skull" rule's application to mental injuries may have a great and lasting effect on tort law in North Carolina and the manner in which practitioners approach many negligence cases.

One effect the *Poole* ruling may have on tort law is that there may be an increase in the number of intentional and negligent infliction of emotional distress claims. This may be especially true when the plaintiff has been subjected to a traumatic event in her past. Plaintiffs may allege that the present outrageous behavior has aggravated their pre-existing mental condition or disease causing their damages to be much greater than if they had not previously suffered from this condition. Therefore, the lure of greater jury damages awards may increase the number of emotional distress claims in the court system. Some courts have suggested that jurors and judges can evaluate the impact of aggravated mental conditions with no greater difficulty than evaluating any intangible injury.[64] However, a defendant is already responsible for much more damage than was ever foreseeable[65] in his breach of duty to the plaintiff when there is an aggravated physical condition. Thus, applying the "thin skull" rule to mental injuries only compounds the disproportionality that is inherent in the doctrine.[66]

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59. 274 N.C. 49, 161 S.E.2d 737 (1968).

60. *Id.* at 54, 161 S.E.2d at 742.

61. *See* Hoffman v. Reese, 119 N.C. App. 747, 749, 460 S.E.2d 338, 341 (1995); Lee v. Regan, 47 N.C. App. 544, 551, 267 S.E.2d 909, 913 (1980); Hinson v. Sparrow, 25 N.C. App. 571, 574, 214 S.E.2d 198, 200 (1975).

62. 348 N.C. 260, 498 S.E.2d 602 (1998).

63. *See* cases cited *supra* note 39.

64. Gammon v. Osteopathic Hosp. of Me., Inc., 534 A.2d 1282, 1285 (Me. 1988).

65. KEETON ET AL., *supra* note 33, § 43, at 292.

66. The disproportionality refers to the greater burden of damages placed on the defendant although the defendant had no prior information concerning the pre-existing condition. However, either the innocent plaintiff or the tortfeasor must take responsibility for the hidden vul-

While the application of the "thin skull" rule to mental injuries may increase the number of emotional distress claims in North Carolina, the *Poole* court's decision to do so was logical. In *Johnson v. Ruark Obstetrics*,[67] the North Carolina Supreme Court stated that "'mental injury' is simply another type of 'injury'—like 'physical' and 'pecuniary' injuries."[68] Also, the *Poole* court cited the North Carolina Pattern Jury Instructions for Civil Cases, from the footnote to the instruction for Proximate Cause-Peculiar Susceptibility, which defines injury as including "all legally recognized forms of personal harm, including activation or reactivation of a disease or aggravation of an existing condition."[69] Additionally, in *Potts v. Howser*[70] the North Carolina Supreme Court defined the "thin skull" rule as aggravating or activating a pre-existing physical or mental condition.[71] The *Poole* court held that the "thin skull" rule could be applied to mental injury cases and that defendants "may be liable for [the] aggravation or exacerbation of a preexisting mental condition."[72] Thus, the court's decision was based on existing law and definitions of injuries (which included mental injuries) that had not been previously applied to the "thin skull" doctrine.

The *Poole* case only discussed the application of the "thin skull" rule to mental injuries in cases of intentional or negligent infliction of emotional distress.[73] The *Poole* court stated that if the defendant's actions could have reasonably been expected to injure a person of ordinary mental condition, the defendant would be liable for all harm, although the damages may be unusually extensive due to the plaintiff's mental condition.[74] Therefore, only the initial severe emotional distress must be foreseeable in order to recover for the aggravated or exacerbated emotional distress.

The court does not discuss the application of the "thin skull" rule to mental injuries in cases *not* involving emotional distress. For example, if a defendant's negligence in an automobile accident was a breach of duty to an ordinary person, the plaintiff hypothetically could recover both damages for physical injuries and any latent mental injuries ag-

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nerability of the plaintiff. The fairness of the disproportionality is justified "by the fact that the case law provides express notice of the thin skull doctrine." Lawrence Crocker, *A Retributive Theory of Criminal Causation*, 1994 J. CONTEMP. LEGAL ISSUES 65, 79.

67. 327 N.C. 283, 395 S.E.2d 85 (1990).

68. *Id.* at 292-93, 395 S.E.2d at 90 (quoting Young v. Western Union Tel. Co., 107 N.C. 370, 11 S.E. 1044 (1890)).

69. Poole v. Copland, Inc., 125 N.C. App. 235, 244, 481 S.E.2d 88, 94 (1997) (quoting N.C.P.I., Civ. 102.20), *aff'd*, 348 N.C. 260, 498 S.E.2d 602 (1998).

70. 274 N.C. 49, 161 S.E.2d 737 (1968).

71. *Id.* at 54, 161 S.E.2d at 742.

72. 125 N.C. App. at 244, 481 S.E.2d at 94.

73. 348 N.C. 260, 264, 498 S.E.2d 602, 604 (1998).

74. *Id.* at 265, 498 S.E.2d at 605.

gravated by the automobile accident. The *Poole* court does not address this issue and makes no effort to limit the application of the doctrine to emotional distress cases.

Some jurisdictions have limited the "thin skull" rule's application where the flashback or aggravated emotional condition was only the result of an "eggshell psyche" or a "super-sensitive" individual.[75] However, the North Carolina Supreme Court has neither ruled on nor discussed this application of the "thin skull" rule to pre-existing mental conditions. As a result, it has not been determined whether North Carolina will limit the doctrine's use in regard to mental injuries[76] or take the more liberal view held by Louisiana.[77]

The effects on practitioners in North Carolina could be great. Lawyers representing plaintiffs should encourage their clients to disclose any type of pre-existing mental condition, disease, or injury that may have been aggravated or exacerbated by the defendant's breach of duty. By disclosing and utilizing information regarding aggravated mental conditions, advocates will enable their clients to recover more fully for the injuries that they have as a result of the defendant's negligence. For example, if a person is involved in an accident, and a latent schizophrenic condition is aggravated by the accident,[78] much higher medical bills and other losses (i.e. loss of employment) may result. If the plaintiff cannot recover for the exacerbated pre-existing mental condition, the plaintiff will not recover the entire damages suffered at the hands of the defendant. In *Poole*, the North Carolina Supreme Court could have defined causes of actions that the "thin skull" doctrine could or could not be applied to in regard to pre-existing *mental* conditions. However, the court did not. Thus, plaintiff's lawyers should challenge the North Carolina appellate courts to do so while advocating for the best interests of their clients.

Defense lawyers must be aware of the possible application of the "thin skull" rule to pre-existing mental conditions by plaintiffs in cases not involving emotional distress. In order to protect their clients' interests, defense lawyers should fight this interpretation of *Poole*.[79] Defendants should argue against expanding the "thin skull" doctrine any further.

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75. Therriault v. Swan, 558 A.2d 369 (Me. 1989) (recognizing a special "eggshell psyche" rule for pre-existing emotional injuries).

76. *See id.*

77. *See* Thames v. Zerangue, 411 So. 2d 17 (La. 1982); Walton v. William Wolf Baking Co., 406 So. 2d 168 (La. 1981); Giamanco v. EPE, Inc., 619 So. 2d 842 (La. Ct. App. 1993).

78. Steinhauser v. Hertz Corp., 421 F.2d 1169 (2d Cir. 1970) (holding that a young girl predisposed to schizophrenia could fully recover damages for the full-blown psychosis resulting from an accident).

79. 348 N.C. 260, 498 S.E.2d 602 (1998).

CONCLUSION

Physical injuries can be objectively diagnosed and treated, whereas a mental injury is much more subjective in its origin, treatment, and diagnosis. Nonetheless, mental injury is a form of harm for which a victim should be compensated. However, expanding the "thin skull" doctrine without boundaries to include pre-existing mental injuries may create some dubious claims and disproportionate damages placed on defendants. The *Poole* case's application of the "thin skull" rule to mental injuries in emotional distress actions is not where the problem lies. Since the court's analysis requires that the victim be an ordinary person who would have suffered from severe emotional distress, the aggravation of a pre-existing mental condition or disease is foreseeable to the defendant.[80] However, it is the lack of boundaries regarding the rule's application to mental injuries that will cause confusion in the interpretation of the law. If a plaintiff may recover for exacerbated latent mental conditions, even where severe emotional distress is not foreseeable to a person of ordinary sensitivity, claims of past traumatic flashbacks will undoubtedly rise. The North Carolina Supreme Court should place limits and establish boundaries on the use of the "thin skull" rule to pre-existing mental injuries.

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80. *Id.* at 264, 498 S.E.2d at 604.