



SCOKY Holds "Garden-variety" Mental Anguish Claim Waives Psychotherapist-Patient Privilege of KRE 507

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In an opinion issued in April 2011, the Kentucky Supreme Court held in a personal injury lawsuit alleging medical negligence that a plaintiff's claim for "garden-variety" mental suffering waived the psychotherapist-patient privilege of KRE 507. Specifically, the Court in *Dudley v. Stevens*, 338 S.W.3d 774 (Ky. 2011), a unanimous decision authored by Justice Venters, found that such a claim puts the patient's prior mental state in issue and falls within the exception to the privilege of KRE 507(c)(3), which creates an exception to the privilege if the patient "is asserting that patient's mental condition as an element of a claim or defense...." In so holding, the Court confirmed what in my experience has been a common approach to the waiver issue by Kentucky trial courts.