

A woman brought a wrongful death action against a car driver who hit and killed her husband while her husband was crossing a street. In settlement negotiations, the driver told the woman that he was sorry for what had happened and that he had been too drunk to drive when he ran into her husband with his car. The woman and the driver settled the wrongful death action for \$1 million.

Subsequently, the driver was charged with reckless homicide of the husband. At the driver's criminal trial, the prosecutor offered, as evidence of the driver's guilt, the driver's statement to the woman during settlement negotiations.

Is the driver's statement to the woman admissible in the subsequent criminal prosecution?

- A. No, because it is hearsay not within any exception.
- B. No, because a statement made in civil settlement negotiations between private parties is not admissible to prove the validity of a claim in a subsequent criminal prosecution.
- C. Yes, because a statement made in civil settlement negotiations is admissible in a subsequent criminal prosecution.
- D. Yes, because the statement's probative value outweighs the risk of prejudice and jury confusion.

Correct

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Explanation:

Compromise offers & negotiations

(FRE 408)

| | |
|-----------------------|--|
| Applicability | Offers made with intent to compromise (ie, avoid or end) claim Conduct/statements made during compromise negotiations about claim |
| Prohibited use | Not admissible to: prove/disprove validity or amount of disputed claim <i>or</i> impeach by prior inconsistent statement or contradiction |
| Exceptions | Conduct/statements admissible for above purposes if: made during negotiations in civil dispute involving government regulatory, investigative, or enforcement agency <i>and</i> offered in subsequent criminal case Admissible for other purpose—eg: proving witness's bias or prejudice negating contention of undue delay proving effort to obstruct criminal investigation or prosecution |

FRE = Federal Rule of Evidence.

Under FRE 408, evidence of offers of compromise, or conduct or **statements made during compromise negotiations**, is generally inadmissible if that evidence is offered to:

prove the validity or amount of a **disputed claim** *or*
impeach a witness with a prior inconsistent statement.

This rule applies to statements made during compromise negotiations in a civil dispute that are offered in a subsequent criminal prosecution *unless* the negotiations involved a government regulatory, investigative, or enforcement agency.

Here, the prosecutor offered the driver's statement that he was too intoxicated to drive as evidence of his guilt—ie, to prove the validity of the criminal charge—in a subsequent criminal prosecution. But the driver's statement was made during settlement negotiations in a civil dispute between two private parties—not a negotiation involving a government agency (**Choice C**). Therefore, the driver's statement is *not* admissible.

(Choice A) Statements made by and offered against an opposing party (eg, the driver) are **excluded** from the rule against hearsay. Since the driver's statement was offered against him at his criminal trial, it is excluded from hearsay. However, the statement is still barred by FRE 408.

(Choice D) Under FRE 403, otherwise relevant evidence can be *excluded* if its probative value is substantially outweighed by **certain dangers** (eg, unfair prejudice, jury confusion). But a showing that the probative value of evidence outweighs these dangers is not needed to *admit* evidence (as suggested by this answer choice). Nevertheless, the driver's statement is inadmissible under FRE 408.

Educational objective:

FRE 408 applies to statements made during compromise negotiations in a civil dispute that are offered in a subsequent criminal prosecution unless the negotiations involved a government regulatory, investigative, or enforcement agency.

References

Fed. R. Evid. 408 (discussing the admissibility of compromise offers and negotiations).

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