

A woman sued a department store for injuries she sustained when she slipped and fell in the store. At trial, the woman proposes to testify that, when the store manager rushed to the scene, he said to the woman, "I'm so sorry about the water on the floor there, but don't worry—the store will pay for the ambulance and your hospital bill." The store's attorney objects.

How should the court rule on the admissibility of the woman's testimony as to the store manager's statement?

- A. The testimony about the water is an admissible statement of an opposing party, but the rest of the testimony is inadmissible as an offer to pay medical expenses.
- B. The testimony is admissible in its entirety as the statement of an opposing party.
- C. The testimony is inadmissible in its entirety, because it is hearsay not within any exception.
- D. The testimony is inadmissible in its entirety, because the manager's statement is in the context of an offer to pay medical expenses.

Explanation:

Offers to pay medical expenses

(FRE 409)

Offers to pay medical, hospital, or similar expenses are inadmissible to prove liability for injury

Conduct or statements not part of the offer to pay medical expenses are admissible even if made contemporaneously with offer

FRE = Federal Rule of Evidence.

Under Federal Rule of Evidence (FRE) 409, evidence that a party paid or **offered to pay** medical, hospital, or similar **expenses resulting from an injury** is **inadmissible to prove liability** for that injury. This is true even though the offer would otherwise be admissible as a relevant **nonhearsay** statement made by, or attributable to, an opposing party—eg, a statement by a party's agent within the scope of his/her agency. Therefore, the store manager's offer to pay the woman's medical expenses is inadmissible **(Choice B)**.

However, FRE 409 does **not extend to** conduct or **statements** that were **not part of the offer** to pay—even if made contemporaneously with that offer. Therefore, the store manager's statement about the water is admissible as a nonhearsay statement attributable to an opposing party—ie, one made by the store's agent on a matter within the scope of his agency **(Choice D)**.

(Choice C) The store manager's statement is not hearsay since it is a statement attributable to an opposing party.

Educational objective:

Evidence that a party paid or offered to pay medical, hospital, or similar expenses is inadmissible to prove liability for an injury. But this rule does not extend to statements or conduct that were not part of the offer to pay, even if made contemporaneously with that offer.

References

Fed. R. Evid. 409 (offers to pay medical expenses).

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