

A pedestrian sued a driver for personal injuries sustained when the driver's car hit the pedestrian. Immediately after the accident, the driver got out of his car, raced over to the pedestrian, and said, "Don't worry, I'll pay your hospital bill."

Is the pedestrian's testimony concerning the driver's statement admissible to prove the driver's liability?

- A. No, because it is an offer to pay medical expenses.
- B. No, provided that the driver kept his promise to pay the pedestrian's medical expenses.
- C. Yes, because it is an admission of liability by a party-opponent.
- D. Yes, because it is within the excited utterance exception to the hearsay rule.

Explanation:

Offer of compromise v. Offer to pay medical expenses

	Admissibility	Rationale
Offer of compromise (FRE 408)	Inadmissible to: prove/disprove validity of disputed claim <i>or</i> impeach party through prior inconsistent statement or contradiction	Settlement of disputes
Offer to pay medical expenses (FRE 409)	Always inadmissible to prove liability for injury	Assistance to injured persons

FRE = Federal Rule of Evidence

Under Federal Rule of Evidence (FRE) 409, evidence that a party has paid or **offered to pay** medical, **hospital**, or similar **expenses** resulting from an injury is **inadmissible to prove liability** for that injury. Therefore, the pedestrian's testimony concerning the driver's statement is inadmissible to prove the driver's liability.

(Choice B) A promise to pay medical expenses is inadmissible to prove liability for an injury even if the offering party kept that promise.

(Choice C) A party-opponent's statement is excluded from the rule against hearsay when offered against that party (ie, is **nonhearsay**). But here, since the driver's nonhearsay statement was an offer to pay the pedestrian's medical expenses, it is inadmissible under FRE 409.

(Choice D) The **excited utterance** hearsay exception applies to statements (1) relating to a startling event or condition and (2) made while the declarant was under the stress of excitement caused by that event or condition. Here, no hearsay exception is necessary since the driver's statement is nonhearsay. But even if the statement fell within this exception, it would still be inadmissible under FRE 409.

Educational objective:

Evidence that a party has paid or offered to pay medical, hospital, or similar expenses resulting from an injury is inadmissible to prove liability for that injury.

References

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

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