

In a personal injury case, the plaintiff sued a retail store for injuries she sustained from a fall in the store. The plaintiff alleged that the store had negligently allowed its entryway to become slippery from snow tracked in from the sidewalk. Before the lawsuit was filed, when the plaintiff first threatened to sue, the store's manager said, "I know that there was slush on that marble entryway, but I think your four-inch-high heels were the real cause of your fall. So let's agree that we'll pay your medical bills, and you release us from any claims you might have." The plaintiff refused the offer. At trial, the plaintiff seeks to testify to the manager's statement that "there was slush on that marble entryway."

Is the statement about the slush in the entryway admissible?

- A. No, because it is a statement made in the course of compromise negotiations.
- B. No, because the manager denied that the slippery condition was the cause of the plaintiff's fall.
- C. Yes, as a statement by an agent about a matter within the scope of his authority.
- D. Yes, because the rule excluding offers of compromise does not protect statements of fact made during compromise negotiations.

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.

Public policy encourages the settlement of disputes. As a result, FRE 408 **bars the admission** of evidence of (1) **offers of compromise** or (2) conduct or statements made during **compromise negotiations** when that evidence is offered to:

prove or disprove the validity or amount of a **disputed claim** *or*
impeach by a **prior inconsistent statement or contradiction**.

Here, the plaintiff seeks to testify to the store manager's statement that there was slush on the store's marble entryway where the plaintiff fell. That statement is being offered to prove the validity of the plaintiff's disputed claim that the store negligently allowed its entryway to become slippery, thereby causing her fall. But since that statement was made in the course of compromise negotiations, it is inadmissible.

(Choice B) The manager's denial that the slippery condition caused the plaintiff's fall has no bearing on the admissibility of his statement made during a compromise negotiation.

(Choice C) Out-of-court statements made by a party-opponent's agent about a matter within the scope of the agent's authority are excluded from the rule against hearsay (ie, are [nonhearsay](#)). But since the manager's statement here was made during compromise negotiations, it cannot be used to prove the validity of a disputed claim.

(Choice D) FRE 408 *does* protect statements of fact made during compromise negotiations.

Educational objective:

Compromise offers and negotiations are inadmissible when offered to (1) prove or disprove the validity or amount of a disputed claim or (2) impeach by a prior inconsistent statement or contradiction.

References

Fed. R. Evid. 408 (compromise offers and negotiations).

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