

A plaintiff, the owner of a motel chain, brought a breach-of-contract action against a defendant, a construction company, in federal court. The plaintiff alleged that the defendant's poor workmanship in constructing the plaintiff's new motel led to major defects in the motel's foundation. The plaintiff further alleged that the defendant knew about the defects but willfully concealed them.

During settlement negotiations, the defendant produced a quality control report that it had created during the motel's construction but had not previously shared with the plaintiff. The report indicated that the defendant was aware of the foundation defects, and it included an estimate on the cost of repair. The defendant relied on the report during the settlement negotiations in order to justify its settlement offer; however, no settlement was reached.

At trial, the plaintiff seeks to introduce the quality control report to establish the issue of willful concealment.

Is the report admissible?

- A. No, because all statements made during settlement negotiations are inadmissible.
- B. No, because the report is hearsay not within any exception.
- C. Yes, because statements made in settlement negotiations are admissible when offered to prove the validity of a claim.
- D. Yes, because the report was created for purposes other than settlement negotiations and is otherwise admissible.

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.

Federal Rule of Evidence (FRE) 408 is an exclusionary rule designed to encourage compromise and settlement of disputes. As a result, the following evidence is generally **not admissible** to prove/disprove the validity or amount of a disputed claim OR to impeach a witness with a prior inconsistent statement:

Offers of compromise made with the intent to avoid or settle the claim

Conduct or statements made during compromise or settlement negotiations

However, FRE 408 **does not apply** to evidence **created for reasons other than settlement**, so a party cannot immunize evidence from admission merely by producing it during settlement negotiations **(Choice A)**. Accordingly, evidence created for nonsettlement reasons is **admissible** so long as it is not barred by another rule (eg, the rule against hearsay). Here, the quality control report was created during the motel's construction and *before* settlement negotiations were ever contemplated. Therefore, the report is not barred under FRE 408.*

Nor is the report barred by the rule against hearsay, under which out-of-court statements are *not* admissible to prove the truth of the matter asserted therein. That is because out-of-court statements that are made by a **party-opponent** (eg, the defendant's report) and offered against that party are excluded from this rule and considered nonhearsay **(Choice B)**. Since there is no other basis for exclusion, the report is admissible.

*In contrast, a similar report made for settlement negotiations would be subject to the limitations set forth in FRE 408.

(Choice C) Statements made during settlement negotiations are not always admissible to prove a claim's validity. Such statements are *inadmissible* for this purpose unless (1) made during negotiations in a civil dispute involving a government regulatory, investigative, or enforcement agency and (2) offered in a subsequent criminal case.

Educational objective:

Statements made during settlement negotiations are generally inadmissible to prove/disprove the validity of a claim or impeach a party with a prior inconsistent statement. But a party cannot immunize evidence created for reasons other than settlement from admission merely by producing the evidence during settlement negotiations.

References

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

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