

4.18. Payment of Medical and Other Expenses

Evidence of offering, promising, or making payment for medical, hospital, or other expenses, such as lost wages, resulting from an injury is not admissible as proof of liability for the injury, but is admissible to prove some other fact relevant to a material issue, such as agency, or ownership or control of an object or premises, or bias or prejudice of a witness.

Note

This rule is derived from established, albeit sparse, New York law governing the admissibility of evidence of a party's post-injury offer to pay the injured party's medical, hospital or other expenses, such as lost wages.

The first portion of the rule that precludes admissibility of the specified post-injury conduct is derived from *Grogan v Dooley* (211 NY 30 [1914, Cardozo, J.]). In *Grogan*, a personal injury action, the trial court permitted plaintiff to prove the defendant offered to pay his wages and medical expenses while he was disabled, viewing the offer as an admission of liability. The Court of Appeals rejected the ruling, holding the evidence had "no such significance." (*Id.* at 31.) Rather, the defendant's offer "should be treated as a humane recognition of an existing necessity" (*id.* at 32); and "[t]he law would be doing wrong to [persons making such offers] and scant service to [recipients of the offers] if it throttled the impulses of benevolence by distorting humane conduct into a confession of wrongdoing." (*Id.*)

While the rule excludes payment and offers of payment of medical and similar expenses, it does not encompass evidence of statements, e.g., opinions or admissions of fault or liability, when made in connection with the payment or offer. Such statements may, however, be inadmissible under Guide to New York Evidence rule 4.05 (Completing and Explaining Writing, Recording, Conversation or Transaction) when made in the context of settling or compromising a matter in dispute.

No New York case has addressed offers to pay property damage.

New York, however, in the second portion of the rule permits admissibility of the specified post-injury conduct when admissible for a purpose other than establishing liability. (See e.g. *Flieg v Levy*, 148 App Div 781, 783 [2d Dept 1912] [ownership of horse alleged to have struck or kicked plaintiff].) The non-liability purposes enumerated are suggested by *Flieg* and by comparable rules that statements or conduct of a party may not be admissible to establish liability for

reasons of policy, but may be admissible for non-liability purposes where such purposes are relevant.