Rule 408. Compromise and Offers to Compromise

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

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This rule will substantially alter present practice in Minnesota affording more protection to compromise discussions that presently exist. The increased protection is justified to the extent that it will encourage frank and free discussion to compromise negotiations and avoid the necessity for parties to speak in terms of hypotheticals. Not only are offers of compromise or the acceptance of compromise inadmissible but also all statements made in compromise negotiations. Contra, Esser v. Brophey, 212 Minn. 194, 196-99, 3 N.W.2d 3, 4, 5 (1942). Before the rule of exclusion is applicable there must be a genuine dispute as to either validity or amount. Absent such a dispute there is no real compromise. The rule does not immunize otherwise discoverable material merely because it was revealed within the context of an offer of compromise. Finally the rule only excludes evidence of compromise on the issue of liability, not for other possible purposes as suggested in the rule. See Esser, id. at 199, 200, 3 N.W.2d at 6.