

4.16. Offers to Compromise (CPLR 4547)

Evidence of (a) furnishing, or offering or promising to furnish, or (b) accepting, or offering or promising to accept, any valuable consideration in compromising or attempting to compromise a claim which is disputed as to either validity or amount of damages, shall be inadmissible as proof of liability for or invalidity of the claim or the amount of damages.

Evidence of any conduct or statement made during compromise negotiations shall also be inadmissible. The provisions of this rule shall not require the exclusion of any evidence, which is otherwise discoverable, solely because such evidence was presented during the course of compromise negotiations.

Furthermore, the exclusion established by this rule shall not limit the admissibility of such evidence when it is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay or proof of an effort to obstruct a criminal investigation or prosecution.

Note

This rule is verbatim from CPLR 4547. It governs the admissibility of evidence of compromise and settlement and offers to compromise or settle when offered to prove liability or lack thereof or the amount of damages.

CPLR 4547 was enacted in 1998 (L 1998, ch 317, §1). It tracks in large part the language of the original version of Federal Rules of Evidence rule 408 as the legislative intent was to make New York law consistent with that rule as it then existed (Senate Introducer's Mem in Support, Bill Jacket, L 1998, ch 317 at 4). In 2006, however, Federal Rules of Evidence rule 408 was amended to address issues that had split the federal courts regarding its applicability in criminal trials. The amended rule provides for the admissibility in criminal cases of statements made by a party in discussions regarding the compromise of a civil claim by a government agency acting in its regulatory, investigative, or enforcement capacity. However, Federal Rules of Evidence rule 408 makes evidence of a compromise or offers to

compromise civil litigation inadmissible in criminal actions involving the same facts.

The Court of Appeals has not addressed the issue of the applicability of CPLR 4547 in criminal actions. In *People v Newman* (107 AD3d 827 [1st Dept 2013]), the issue was raised but not resolved. In *Newman*, defendant was convicted of grand larceny in the first degree based on his embezzlement of money from the complainants. He argued that the trial court erred in admitting evidence of the written statement and the payments he made to the complainants as such evidence was barred by CPLR 4547. “Assuming, without deciding, that CPLR 4547 applies to criminal trials,” the Court concluded that the statute did not apply because defendant had admitted the embezzlements (*id.* at 828). In *People v Forbes-Haas* (32 Misc 3d 685 [Onondaga County Ct 2011]), a grand larceny in the third degree prosecution based on defendant’s alleged wrongful taking and withholding funds from an escrow account at a bank, the trial court allowed the prosecution to introduce into evidence statements made by the defendant during a settlement conference with employees of the bank, and the settlement agreement between the defendant and the bank. The court held that CPLR 4547 was inapplicable in a criminal action because “the public interest in prosecuting crime outweighs achieving a settlement of civil claims” (*id.* at 688).