

## 4.15. Liability Insurance

**Evidence that a person was or was not insured against liability:**

**(1) is not admissible to prove that the person acted negligently or otherwise wrongfully or that the person should be held strictly liable, or to establish damages;**

**(2) is admissible to prove some other fact relevant to a material issue, such as agency, ownership or control over premises where the accident occurred or the instrumentality that caused the accident, or bias or prejudice of a witness.**

### Note

This rule is derived from well settled New York law governing the admissibility of evidence as to whether a person is or is not insured against liability.

As set forth in subdivision (1), such evidence is inadmissible when offered on the issue of whether an insured acted negligently or otherwise wrongfully or should be held strictly liable. (See e.g. *Salm v Moses*, 13 NY3d 816, 817 [2009] [“(e)vidence that a defendant carries liability insurance is generally inadmissible”]; *Leotta v Plessinger*, 8 NY2d 449, 461 [1960] [“(o)rdinarily whether a defendant has or has not obtained insurance is irrelevant to the issues, and, since highly prejudicial, therefore, inadmissible”]; *Simpson v Foundation Co.*, 201 NY 479, 490-491 [1911] [it was improper for plaintiff’s counsel to ask questions suggesting to the jury that the defendant was insured in order to induce the jury to give a larger verdict]; see also *Rendo v Schermerhorn*, 24 AD2d 773, 773 [3d Dept 1965] [“we cannot condone the obvious reference to the lack of defendants’ insurance coverage contained in defense counsel’s summation, a fact which in the circumstances here may very well have engendered sympathy in the jurors’ minds”].)

As stated by the Court of Appeals in *Salm*, excluding evidence of insurance coverage on the issue of liability is premised on two reasons:

“First, ‘it might make it much easier to find an adverse verdict if the jury understood that an insurance company would be compelled to pay the verdict.’ Second, evidence of liability insurance injects a collateral issue into the trial that is not relevant as to whether the insured acted negligently. Although we have acknowledged that liability insurance has increasingly become more prevalent and that, consequently, jurors are now more likely to be aware of the

possibility of insurance coverage, we have continued to recognize the potential for prejudice.” (*Salm*, 13 NY3d at 817-818 [citations excluded].)

Subdivision (2) recognizes that New York law does not exclude evidence of insurance coverage or lack of insurance when the evidence is offered for a purpose other than to establish liability or fault, such as to establish ownership or control over the premises where the accident occurred or the instrumentality that caused the accident (*see Leotta v Plessinger*, 8 NY2d 449, 462 [1960]), or to show bias or interest on the part of a witness. (*Salm*, 13 NY3d at 818.) The enumeration of potential admissible purposes is illustrative and not exclusive. When such evidence is admissible, however, the Court of Appeals has specifically cautioned that the trial court may exclude the evidence if it determines the risk of confusion or prejudice outweighs its probative value. (*Salm*, 13 NY3d at 818.)