United States Court of Appeals
For the First Circuit

No. 17-1851

JOSÉ SUERO-ALGARÍN,

Plaintiff, Appellee,

v.

CMT HOSPITAL HIMA SAN PABLO CAGUAS,

Defendant, Appellant,

TURABO VASCULAR GROUP, PSC; DR. LUIS APONTE-LÓPEZ; JANE DOE; CONJUGAL PARTNERSHIP APONTE-DOE; COMPANIES A-Z; JOHN DOE; ROSE ROE; DR. RICARDO ROCA; GRISELDA ROCA, Wife of Dr. Ricardo Roca; CONJUGAL PARTNERSHIP ROCA-ROCA,

Defendants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Hon. Silvia L. Carreño-Coll, U.S. Magistrate Judge]

Before

Torruella, Lipez, and Thompson,
Circuit Judges.

Heidi Rodríguez-Benítez, with whom Roberto Ruiz-Comas and RC Legal & Litigation Services, P.S.C. were on brief, for appellant.

Pedro F. Soler-Muñiz, with whom Alejandra C. Martínez-Méndez, Alejandro J. Fernández, and Alejandro J. Fernández-Muzaurieta, were on brief, for appellee.

Orlando H. Martínez-Echeverría, with whom Orlando H. Martínez Echeverría Law Office LLC were on brief, for Association of Hospitals of Puerto Rico, Inc., amicus curiae.

Manuel San Juan-Martinó, with whom Carlos A. Del Valle-Cruz, Del Valle Law, and Rafael E. García-Rodón, were on brief, for

Association of Victims of Medical Malpractice, amicus curiae.

Eugene F. Hestres-Vélez, with whom BBH LLC was on brief, for Puerto Rico Medical Defense Insurance Company, amicus curiae.

April 20, 2020

TORRUELLA, **Circuit Judge**. Oscar Suero-Durán ("Suero-Durán") died from complications relating to the removal of his dialysis catheter at Defendant-Appellant Hospital HIMA San Pablo Caguas's ("HIMA") facility. Suero-Durán's son, Plaintiff-Appellee José Suero-Algarín ("Suero-Algarín"), filed a suit for damages in the U.S. District Court for the District of Puerto Rico against HIMA; his father's treating physician, Dr. Luis Aponte-López ("Dr. Aponte"); Dr. Aponte's medical services corporation, Turabo Vascular Group, PSC ("TVG")[1]; and Dr. Ricardo Roca ("Dr. Roca"), a participant in the HIMA medical internship program who also treated Suero-Durán (collectively, the "co-defendants").[2] Suero-Algarín alleged that the negligence of the co-defendants caused his father's death and requested $3,000,000 in compensatory damages for the emotional distress that he suffered as a result.

After trial, the jury returned a verdict finding the co-defendants jointly liable for medical malpractice and awarding Suero-Algarín $1,000,000 in compensatory damages for emotional distress. The jury found HIMA responsible for 10% of Suero-Algarín's

[1] Dr. Aponte solely owned TVG and provided medical services at HIMA's facilities under this entity's corporate name.

[2] Only HIMA is a party to this appeal. TVG and Dr. Aponte withdrew their appeals prior to oral argument. Dr. Roca never sought recourse from this court. In fact, the district court entered a default judgment against him in the early stages of this case.

damages.[3] Dissatisfied with this result, HIMA pursued various avenues for post-verdict relief. It moved for judgment as a matter of law, claiming there was no legally sufficient evidentiary basis for a reasonable jury to find that it had acted negligently. In the alternative, HIMA sought a new trial or remittitur of the jury's remedial damages award.

In its request for remittitur, HIMA averred that, because this is a diversity case, the district court was required to review the jury's award for excessiveness in accordance with the standard set forth by the Puerto Rico Supreme Court in Santiago Montañez v. Fresenius Medical Care, 195 P.R. Dec. 476 (2016) (hereinafter, "Fresenius"), which entails a comparison with damages awarded in similar cases in Puerto Rico courts (hereinafter, the "comparative standard").[4] The district court denied HIMA's motion for judgment as a matter of law but granted remittitur, reducing the jury's compensatory damages award from $1,000,000 to $400,000. In so doing, the district court rejected HIMA's characterization of Fresenius as articulating a new standard for reviewing the excessiveness of the jury's damages award based on the use of comparator cases. Instead, the district court applied the longstanding federal standard of

[3] The jury apportioned the remaining 90% equally among TVG, Dr. Aponte, and Dr. Roca (i.e., 30% each).

[4] For the purposes of our review, we rely on the stipulated translation of the case in the record.

review. HIMA appealed, asking us to reverse the district court's denial of its motion for judgment as a matter of law on the basis that the evidence presented at trial was legally insufficient to warrant a finding of liability on its part. Alternatively, HIMA requested that we remand the case to the district court with instructions to review the jury's damages award for excessiveness in accordance with the comparative standard.

After careful consideration, we affirm the district court's denial of HIMA's motion for judgment as a matter of law as well as its remitted verdict.

I. BACKGROUND

A. Factual Background

On July 10, 2013, Suero-Durán was admitted to HIMA to receive treatment for bilateral leg cellulitis, which was beginning to show signs of filariasis.[5] He was initially attended by medical internist Dr. Livino Lora. Suero-Durán had a history of serious health issues, including diagnoses of morbid obesity, chronic obstructive pulmonary disease, advanced renal disease, and diabetes mellitus. Two of Suero-Durán's conditions -- his chronic obstructive pulmonary disease and advanced renal disease -- worsened after he

[5] Filariasis is a parasitic condition where the parasite locks the lymphatic system in the lower extremities, causing the legs to expand. In certain extreme cases, this condition is referred to as elephantiasis because it causes a person's lower extremities to swell to the extent that they resemble those of an elephant.

was admitted to HIMA. On July 15, five days after arriving at the hospital, Suero-Durán began experiencing respiratory failure. The next day, a nephrologist diagnosed him with renal failure and recommended hemodialysis, which required the introduction of a catheter. Accordingly, Suero-Durán's treating physician, Dr. Aponte, placed a double lumen hemodialysis catheter (the "double lumen catheter") inside his left subclavian artery. Because he understood that Suero-Durán's morbid obesity prevented him from laying down without obstructing his airway, Dr. Aponte placed him in a special upright position, at an angle of thirty to forty-five degrees, instead of the typical flat, face-up position ("supine position") recommended for catheter placement.

On August 9, Dr. Aponte noticed that Suero-Durán's double lumen catheter was malfunctioning and therefore replaced it with a new one on August 10. However, the new catheter also malfunctioned. Although chest X-rays indicated that it was correctly placed, the new catheter did not provide the required blood flow, so Dr. Aponte determined that it should be removed. Dr. Aponte instructed Dr. Roca to remove Suero-Durán's catheter without the need for supervision.

Dr. Roca was a participant in HIMA's internship program.[6] Dr. Aponte had met Dr. Roca when Dr. Roca was on rotation in the

[6] Dr. Roca was required to participate in an internship program to obtain his permanent Puerto Rico medical license.

hospital's surgery department. They eventually reached an agreement extending Dr. Roca's responsibilities beyond those imposed by HIMA's internship program. Pursuant to their agreement, Dr. Roca would assist Dr. Aponte with both his patients and those referred to him by HIMA by making daily rounds, taking medical history, physical, and progress notes, and drafting discharge summaries. Dr. Aponte was to review all of Dr. Roca's notes and discharge summaries. Per the agreement, Dr. Roca would "[i]n no shape or form . . . help[] [Dr. Aponte] in the surgery room." Dr. Aponte memorialized the terms of his agreement with Dr. Roca in a letter that he sent to the director of HIMA's internship program, Dr. Carmen Cortés, on August 7, 2013 -- three days before he instructed Dr. Roca to remove Suero-Durán's double lumen catheter.

HIMA's internship program required a fully licensed doctor to accompany interns at all times.[7] However, on August 11, 2013, Dr. Roca placed Suero-Durán in an upright sitting position of approximately forty-five degrees and removed his catheter without any supervision. Immediately afterward, Suero-Durán's eyes rolled back as he became paralyzed and stopped breathing. Medical personnel at the hospital called a "code green"[8] and performed CPR on

[7] At the time of the events in question, Dr. Roca only held a provisional Puerto Rico medical license.

[8] "Code green" refers to an alert to hospital staff that a patient needs emergency assistance.

Suero-Durán. Unfortunately, Suero-Durán never recovered. He suffered irreversible brain damage and remained comatose until his death on October 13, 2013 -- a little over two months after the incident.

B. Procedural Background

On June 26, 2014, Suero-Algarín, a resident of Illinois, filed a complaint in the U.S. District Court for the District of Puerto Rico predicated on diversity jurisdiction against HIMA and TVG as well as against Dr. Aponte and Dr. Roca. Suero-Algarín alleged that the treatment that his father received at HIMA constituted medical malpractice. He requested $3,000,000 in compensatory damages for the pain and suffering he endured as a result of his father's death. Suero-Algarín claimed that Dr. Aponte and Dr. Roca acted negligently because they failed to adhere to the relevant standard of care.

As to HIMA, Suero-Algarín claimed the hospital was both jointly and vicariously liable for all negligent acts related to the death of his father, who was a patient by virtue of admission into the emergency room. He also averred that HIMA was liable due to its alleged lack of medical protocols to ensure the safe removal of Suero-Durán's hemodialysis catheter, lack of mechanisms to assure an immediate response to his cardiorespiratory arrest, and "improper credentialing and improper conferring . . . of medical privilege to . . . Dr. Roca and Dr. Aponte, who clearly [did] not have adequate

qualifications to practice medicine and vascular surgery."

The ensuing eight-day jury trial, which took place in March 2017, was a classic battle of the experts. On one side, Suero-Algarín's expert, Dr. David C. Dreyfuss ("Dr. Dreyfuss"), opined that Dr. Roca's failure to place Suero-Durán in the Trendelenburg position[9] when removing the catheter caused him to suffer an air embolism, which led to cardiorespiratory arrest, brain damage, and his eventual death. He also testified that Suero-Durán's condition deteriorated even further because of delays in calling a code green and performing CPR. On the other side, the co-defendants' experts, Dr. Samuel A. Amill-Acosta ("Dr. Amill") and Dr. Luis A. López-Galarza ("Dr. López"), explained that Dr. Roca correctly placed Suero-Durán in an upright position to remove the catheter in light of his morbid obesity. In their view, Suero-Durán died because of a sudden cardiac arrhythmia resulting from his delicate medical condition rather than an air embolism. They also maintained that the hospital staff called a code green and performed CPR in a timely manner.

The jury returned a verdict in favor of Suero-Algarín, awarding him $1,000,000 for his pain and suffering. The jury apportioned fault as follows: 10% to HIMA, 30% to TVG, 30% to

[9] The Trendelenburg position requires that the patient be laid flat on his back with his feet elevated above the head.

Dr. Aponte, and 30% to Dr. Roca. Following the verdict, HIMA moved for a judgment as a matter of law under Fed. R. Civ. P. 50(b) and for a new trial under Fed. R. Civ. P. 59(a)(1), or in the alternative, a remittitur of the jury's damages award. In its motion for judgment as a matter of law, HIMA argued that the jury was presented with insufficient evidence to merit a finding of liability. In its motion for a new trial or remittitur, HIMA argued that, because Puerto Rico law governed Suero-Algarín's claim, the excessiveness of the jury's damages award had to be evaluated through the prism of the standard established by the Supreme Court of Puerto Rico in Fresenius, which allegedly required a comparative analysis of damages awarded in similar cases in Puerto Rico courts. While it did not specify the lower amount that it believed would constitute a reasonable award under the Puerto Rico comparative standard, HIMA did compare the facts and the award in this case to several other medical malpractice cases from Puerto Rico courts. The final awards in those cases ranged from a high of $55,000 (for each of the minor children of a decedent) to a low of $20,000 (for the daughter of a decedent).

On July 6, 2017, the district court ruled on HIMA's motions for post-judgment relief in an Omnibus Order. It denied HIMA's motions for judgment as a matter of law and new trial, but it granted its motion for remittitur, reducing the jury's award to $400,000. See Suero-Algarín v. HIMA San Pablo Caguas, No. 3:14-cv-01508, 2017

WL 4227586, at *4 (D.P.R. July 6, 2017). In reviewing the jury's award for excessiveness, the district court declined HIMA's invitation to apply the Puerto Rico comparative standard that it understood to have been enunciated in Fresenius and instead applied the federal standard -- i.e., "grossly excessive, inordinate, shocking to the conscience . . ., or so high that it would be a denial of justice to permit [the award] to stand." See id. at *3 (quoting Correa v. Hosp. San Francisco, 69 F.3d 1184, 1197 (1st Cir. 1995)). In support of its decision, the district court relied primarily on our opinion in Marcano Rivera v. Turabo Medical Center Partnership, 415 F.3d 162, 172 (1st Cir. 2005), in which we held that "federal district courts [did not have] to review damages for consistency with awards approved by the Supreme Court of Puerto Rico in similar cases" because Puerto Rico law did not "depart[] from the ordinary practice of reviewing awards under the federal standards for judging excessiveness." See Suero-Algarín, 2017 WL 4227586, at *3.

On August 19, 2017, Suero-Algarín accepted the reduced $400,000 award,[10] and on September 5, 2017, final judgment entered

[10] The district court granted Suero-Algarín the option of either accepting the reduced award or proceeding to a new trial on damages. Suero-Algarín, 2017 WL 4227586, at *4; see Conjugal P'ship of Jones v. Conjugal P'ship of Pineda, 22 F.3d 391, 397 (1st Cir. 1994) ("Under the practice of remittitur . . . the court may also condition the denial of a motion for a new trial on the filing by plaintiff of a remittitur in a stated amount." (quoting Phelan v. Local 305, 973 F.2d 1050, 1064 (2d Cir. 1992))).

against the co-defendants. HIMA filed a timely appeal, claiming that the district court erred in denying its motion for judgment as a matter of law and in declining to apply the Fresenius comparative standard in its review of the jury's award for excessiveness.

II. DISCUSSION

A. HIMA's Motion for Judgment as a Matter of Law

We review de novo the district court's denial of HIMA's motion for judgment as a matter of law under Fed. R. Civ. P. 50(b). Warner v. Horned Dorset Primavera, Inc. (In re Blomquist), 925 F.3d 541, 546 (1st Cir. 2019). "[O]ur scrutiny of the jury verdict," however, "is tightly circumscribed." Sailor Inc. F/V v. City of Rockland, 428 F.3d 348, 351 (1st Cir. 2005) (internal quotation marks omitted). Although we review the record as a whole, we construe facts in the light most favorable to the jury verdict, draw any inferences in favor of the non-movant, and abstain from evaluating the credibility of the witnesses or the weight of the evidence. In re Blomquist, 925 F.3d at 546. In sum, we must affirm the district court's denial of HIMA's Rule 50(b) motion for judgment as a matter of law "unless the evidence . . . could lead a reasonable person to only one conclusion, namely, that [HIMA] was entitled to judgment." Full Spectrum Software, Inc. v. Forte Automation Sys., Inc., 858 F.3d 666, 671 (1st Cir. 2017) (quoting Astro-Med, Inc. v. Nihon Kohden Am., Inc., 591 F.3d 1, 13 (1st Cir. 2009)).

HIMA challenges the district court's denial of its Rule 50(b) motion arguing that the jury lacked a legally sufficient evidentiary basis to find it responsible for 10% of Suero-Algarín's damages.[11] HIMA sets out various reasons why the jury's finding of either direct or vicarious liability is unsupported by the record. We need not, however, address all of HIMA's contentions.[12] The record clearly shows that the jury was, as a matter of law, presented sufficient evidence to conclude that HIMA was liable for 10% of Suero-Algarín's damages under Puerto Rico's apparent agency doctrine.

Under Puerto's Rico's "apparent or ostensible agency" doctrine, hospitals and physicians are directly and jointly liable to a victim of malpractice "when [the victim] goes directly to a hospital for medical treatment and the hospital 'provides' the physicians who treat him." Márquez Vega v. Martínez Rosado, 16 P.R. Offic. Trans. 487, 497, 1985 WL 301900 (P.R. May 15, 1985). Puerto Rico law draws a distinction between this situation and when "a person

[11] HIMA does not argue that Dr. Aponte or Dr. Roca acted within the applicable standard of care in relation to Suero-Durán's catheter removal.

[12] In its attempt to shield itself from vicarious liability, HIMA avers that the jury was presented insufficient evidence to conclude that Dr. Roca was an HIMA employee. To save itself from direct liability, HIMA contends that any finding of direct liability based on Suero-Algarín's allegations regarding the hospital's improper credentialing of Dr. Aponte and Dr. Roca or its personnel's failure to adequately respond to Suero-Durán's cardiorespiratory arrest was also devoid of sufficient evidentiary support.

goes directly to a physician's private office, agrees with him as to the treatment he or she is going to receive, and goes to a given hospital on the physician's recommendation merely because said institution is one of several which the physician has the privilege of using." Id. at 497-99. In the latter situation, "as a rule, the hospital should not be held liable for the exclusive negligence of an unsalaried physician," given that "the main relationship established [there] is between the 'patient' and the physician." Id. at 499. The apparent agency analysis focuses on "pinpointing who . . . the patient . . . entrust[ed] with his health: the hospital or the physician." Id. at 496-97. Thus, "[w]ithin this factual framework, . . . it makes no difference whether the attending physician is a hospital employee or not." Id. at 497.

Here, the jury was presented sufficient evidence to conclude that Suero-Durán entrusted his health to HIMA rather than to his treating physicians. At trial, Juan Gustavo Suero-Algarín ("Juan Gustavo"), Suero-Durán's other son, testified that he drove his father directly to HIMA's emergency room after visiting him at his home and noticing that his leg had "coloration" and was warm to the touch. Juan Gustavo further testified that, upon arriving at HIMA's emergency room, Suero-Durán was admitted to the hospital through its regular emergency admission process. Specifically, he narrated that Suero-Durán waited "about an hour, an hour and a half"

in the emergency room waiting area; had his vital signs taken; was told that he was "going to be staying" at the hospital; and eventually was "assigned to a room because the emergency ward was full." As detailed above, once Suero-Durán was admitted to the emergency room on July 10, 2013, he never left the hospital again. Suero-Durán's health complications prolonged his stay, which in turn subjected him to Dr. Roca's aggravating intervention on August 11, 2013, and eventually led to his death.

HIMA does not contest the jury's finding that Dr. Aponte's and Dr. Roca's negligence caused Suero-Durán's death. Instead, HIMA avers that Suero-Durán visited the hospital's emergency room specifically seeking Dr. Lora's and Dr. Aponte's medical assistance, and that he therefore entrusted his medical care to those particular physicians. See Márquez Vega, 16 P.R. Offic. Trans. at 499. It further contends that Dr. Aponte's prior relationship with Suero-Durán also shields the hospital from any liability resulting from Dr. Roca's negligence, given that Dr. Roca treated Suero-Durán pursuant to Dr. Aponte's orders. Suero-Durán and Dr. Aponte did, in fact, have a doctor-patient relationship prior to Suero-Durán's July 10 emergency admission, and Dr. Roca did treat Suero-Durán pursuant to Dr. Aponte's orders. However, this does not compel us to find that the only conclusion a reasonable jury could have made was that Suero-Durán entrusted his health to the treating physicians

to the point of exempting the hospital from liability. Juan Gustavo's testimony reflects that Suero-Durán went "directly to the hospital," and in these situations, Puerto Rico law provides that, because "the main relationship established is between the patient and the hospital administration," the hospital is "directly liable for the damage caused by the physician." Id. at 498.

We therefore hold that in light of the apparent agency doctrine, a reasonable factfinder could conclude that Juan Gustavo's testimony provided a legally sufficient evidentiary basis to find HIMA directly liable for 10% of Suero-Algarín's damages.

B. Standard for Reviewing Excessiveness of Damages Awarded Pursuant to Puerto Rico's General Tort Statute

HIMA also contests the remitted verdict on the ground that the district court should be bound by precedent from the Supreme Court of Puerto Rico instead of federal law for determining the allowable amount of damages. As HIMA sees it, federal courts sitting in diversity must tether their remittitur calculations to the amounts granted in similar medical malpractice cases in Puerto Rico. "The choice of a legal standard presents an abstract question of law and, thus, triggers de novo review." United States v. Maldonado-Rivera, 489 F.3d 60, 65 (1st Cir. 2007) (citing United States v. Huddleston, 194 F.3d 214, 218 (1st Cir. 1999)). If, however, the district court does apply the correct standard, we review its application of the standard for abuse of discretion. See id. (citing United States v.

Natanel, 938 F.2d 302, 313 (1st Cir. 1991)).

1.

Pursuant to the Supreme Court's seminal decision in Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938), "federal courts sitting in diversity apply state substantive law and federal procedural law." Gasperini v. Ctr. for Humanities, Inc., 518 U.S. 415, 427 (1996). To determine whether a state law classifies as "substantive" or "procedural," we apply an "outcome-determination" test: "[D]oes it significantly affect the result of . . . litigation for a federal court to disregard a law of a State that would be controlling in an action upon the same claim by the same parties in State court?" Id. (quoting Guar. Tr. Co. v. York, 326 U.S. 99, 109 (1945)). We do not, however, apply the "outcome-determination" test to "mechanically . . . sweep in all manner of variations," id. at 428; rather, we apply it guided by "the twin aims of the Erie rule: discouragement of forum-shopping and avoidance of inequitable administration of the laws," id. (quoting Hanna v. Plumer, 380 U.S. 460, 468 (1965)). When a state law is substantive in part and procedural in part, the relevant question for Erie purposes is "whether federal courts can give effect to the substantive thrust . . . without untoward alteration of the federal scheme for the trial and decision of civil cases." Id. at 426.

In Gasperini, the Supreme Court examined a law codified

by the New York Legislature, which empowered appellate courts "to review the size of jury verdicts . . . when the jury's award 'deviates materially from what would be reasonable compensation.'" Id. at 418 (quoting N.Y. C.P.L.R. § 5501(c) (McKinney 2020)). The Supreme Court held, inter alia, that "New York's Legislature codified in § 5501(c) a new standard," that required "closer court review than the common-law 'shock the conscience' test," and which involved "[m]ore rigorous comparative evaluations" than required under federal law. Id. at 429. Therefore, "if federal courts ignore[d] the . . . New York standard and persist[ed] in applying the 'shock the conscience' test to damage awards on claims governed by New York law, 'substantial variations between state and federal [money judgments]' [could] be expected." Id. at 429-30 (alteration in original) (quoting Hanna, 380 U.S. at 467-68). To that end, because "Erie precludes a recovery in federal court [that is] significantly larger than the recovery that would have been tolerated in state court," id. at 431, the Supreme Court resolved that New York's "deviates materially" standard amounted to a substantive rule of state law that federal appellate courts sitting in diversity ought to apply when reviewing the excessiveness of a jury's award, id. at 430.

The Gasperini Court acknowledged that New York's "deviates materially" standard was both substantive and procedural: substantive in the sense that the standard "control[led] how much a plaintiff

[could] be awarded" and procedural "in that [it] assign[ed] decisionmaking authority to New York's Appellate Division." Id. at 426. However, in the Court's view, the fact that New York's objective in enacting § 5501(c) was "manifestly substantive" outweighed the fact that the statute "contain[ed] a procedural instruction." Id. at 429.

2.

HIMA's current challenge is déjà vu all over again. In Marcano Rivera, HIMA appeared before this Court as the defendant-appellant in another medical malpractice case to contest the district court's post-verdict ruling that Gasperini did not require a remittitur of damages in conformity with recent Puerto Rico Supreme Court precedent. See 415 F.3d at 172.[13] Embarking on our analysis, we extrapolated from Gasperini that, when it comes to reviewing jury awards for excessiveness, "federal courts sitting in diversity must apply state substantive law standards . . . if the state law departs from the federal standards for judging excessiveness." Id. at 171. Under the federal standard, courts will reduce a damages award if it is "grossly excessive, inordinate,

[13] In Marcano Rivera, unlike here, the district court did not grant HIMA's motion for remittitur because it was unpersuaded that the award of $5.5 million (of which HIMA would have to pay $2.585 million) to the parents of an infant who suffered severe neurological damage during delivery because of negligence shocked the conscience. 415 F.3d at 165-167, 173-74.

shocking to the conscience of the court, or so high that it would be a denial of justice to permit it to stand." Monteagudo v. Asociación de Empleados del Estado Libre Asociado de P.R., 554 F.3d 164, 174 (1st Cir. 2009) (quoting Marcano Rivera, 415 F.3d at 173); see also Grunenthal v. Long Island R.R. Co., 393 U.S. 156, 159 n.4 (1968). At the time we decided Marcano Rivera, circuit precedent was clear that Puerto Rico law did not meaningfully depart from the federal standard for judging excessiveness so as to trigger Gasperini. See 415 F.3d at 172 (quoting Grajales-Romero v. Am. Airlines, Inc., 194 F.3d 288, 300 (1st Cir. 1999)) (Puerto Rico law "suggests no such departure" from the ordinary practice of reviewing damage awards under the federal standard).

Thus, in Marcano Rivera, HIMA based its argument for remittitur on the fact that "none of the cases in which we [had] rejected Gasperini arguments involved medical malpractice claims." 415 F.3d at 172. In support, HIMA pointed to two medical malpractice cases in which the Supreme Court of Puerto Rico had remitted damages awards: Nieves Cruz v. Universidad de P.R., 151 P.R. Dec. 150 (2000); Blás Toledo v. Hosp. Nuestra Sra. de la Guadalupe, 146 P.R. Dec. 267 (1998). HIMA offered those cases as examples of the Supreme Court of Puerto Rico acting in conformance with its decision to reduce a damages award in Riley v. Rodríguez de Pacheco, 119 P.R. Dec. 762 (1987), another medical malpractice case, based on the premise that

compensation becomes punitive without reasonable limitations. See Marcano Rivera, 415 F.3d at 172 (citing Nieves, 151 P.R. Dec. 150 (certified translation)). HIMA insisted that, taken together, these cases "reflect[ed] a Puerto Rico standard for reviewing damages awards in medical malpractice cases that [both] differ[ed] from the federal standard of reviewing to determine whether an award is 'grossly excessive'" and was tantamount to substantive law that ought to be applied by a federal court sitting in diversity. Id.

Despite viewing the issue as "a close one," we affirmed the denial of remittitur because "we [could not] say, on the basis of the available precedents, that Puerto Rico case law suggests a 'departure from [the] ordinary practice of reviewing awards under the federal standards for judging excessiveness.'" Id. at 172-73 (alteration in original) (quoting Grajales-Romero, 194 F.3d at 300). We observed that, despite HIMA's efforts to depict an emerging trend, in Nieves, the Supreme Court of Puerto Rico clearly reiterated its long-held position that it "will not intervene in the decision on the estimation of damages issued by the lower courts, unless the amounts granted are ridiculously low or exaggeratedly high." Id. at 172. (quoting Nieves, 151 P.R. Dec. 150 (certified translation)). Unlike New York's "deviates materially" standard, we determined that "Puerto Rico's 'exaggeratedly high' standard echoes the federal 'grossly excessive' standard," as evidenced by the fact that it "has

been expressed in terms similar to the federal standard." Id. at 172-73. We therefore concluded that, as of 2005, the Supreme Court of Puerto Rico had not "adopted a more rigorous standard of review for medical malpractice damages that [was] tantamount to a substantive rule of law that must be applied in diversity cases" under Gasperini. Id. at 173.

Accordingly, the threshold issue in the case at bar is whether, given the alleged developments in precedent relating to an appellate court's review of damages awards in medical malpractice cases, we can now definitively say that Puerto Rico's standard departs from the federal "grossly excessive" or "shocks the conscience" standard and is therefore substantive law akin to New York's "deviates materially" standard; or whether the Puerto Rico standard merely echoes the federal standard and is therefore procedural law that federal courts sitting in diversity need not apply.

3.

HIMA presents us with newly available Puerto Rico Supreme Court precedent, which purportedly indicates that Puerto Rico law has evolved since our decision in Marcano Rivera to the point that its standard for reviewing damages awards in medical malpractice cases now departs from the federal standard. HIMA contends that the remitted verdict cannot stand because the district court incorrectly applied the federal "shock the conscience" standard when conducting

its analysis instead of Puerto Rico's more rigorous standard. In HIMA's view, after our decision in Marcano Rivera, the Supreme Court of Puerto Rico gradually moved towards a "specific methodology" that requires appellate courts to "look to damages awarded in similar cases and adjust those awards to the present value" using "the consumer price index" as the exclusive means for factoring in "the change in the acquisition power of the dollar" (i.e., the comparative standard). HIMA relies on Rodríguez v. Hosp. Susoni, 186 P.R. Dec. 889 (2012), and Herrera, Rivera v. S.L.G. Ramírez-Vicéns, 179 P.R. Dec. 774 (2010).

According to HIMA, the Puerto Rico Supreme Court's 2014 decision in Fresenius "cemented [this] specific procedure" such that the comparative standard should now be understood to amount to substantive law that federal courts ought to apply when sitting in diversity in actions governed by Puerto Rico's general tort statute.[14] Not applying this "comparative" standard, HIMA contends, would violate the dictates of Gasperini and Erie by resulting in "substantial variations between state and federal money judgments." As such, HIMA requests that we set aside the district court's remittitur and remand for re-assessment consistent with Puerto Rico's

[14] Article 1802 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31, § 5141 ("Article 1802"), provides that "[a] person who by an act or omission causes damage to another through fault or negligence shall be obliged to repair the damage so done."

"comparative" standard as cemented by the Fresenius decision. However, because Puerto Rico's "exaggeratedly high" standard still echoes the federal "grossly excessive" standard even after Fresenius, we see no reason to depart from our holding in Marcano Rivera. We therefore affirm the remitted verdict.

A close reading of Fresenius reveals that, on a global level, the decision is more properly characterized as a restatement that stresses relevant considerations than a meaningful change of direction. This is best exhibited by the conservative disclaimer in the opening line of the opinion that "[i]n this case, we reaffirm the postulates of estimation and assessment of damages that we established in [Rodríguez v. Hosp. Susoni, 186 P.R. Dec. at 908-09]." Fresenius, 195 P.R. Dec. at 478. As in Nieves, the Supreme Court of Puerto Rico took the opportunity in Fresenius to re-articulate the enduring Puerto Rico standard: "appellate courts should not intervene with the assessment of damages made by the primary forum, except when the amount awarded is ridiculously low or exaggeratedly high." Id. at 490 (citing Rodríguez, 186 P.R. Dec. at 909; Herrera, Rivera, 179 P.R. Dec. at 784). Under Puerto Rico's traditional standard for reviewing damages awarded pursuant to Article 1802, which we can trace back to the first half of the twentieth century, see, e.g., Rodríguez v. Am. P.R. Co. of P.R., 43 P.R.R. 472, 481-482 (P.R. 1932), appellate courts refrain from reducing a trial court's award unless they can

determine that the amount awarded was "absurdly low or exaggeratedly high," see Rodríguez Cancel v. P.R. Elec. Power Auth., 16 P.R. Offic. Trans. 542, 552 (P.R. 1985) (emphasis added).

As explained above, we have already held that the "exaggeratedly high" standard does not depart from the federal standard. See Marcano Rivera, 415 F.3d at 173. Thus, to distinguish this case from Marcano Rivera, HIMA points to what it understands to be the two ways in which Fresenius "cemented its mandate for uniformity to prior similar cases in the award of damages." First, under HIMA's theory, it instructed courts to consult comparator cases; and second, it endorsed a method for adjusting the awards in those cases for inflation based on the consumer price index. This two-step analysis, HIMA contends, "is almost identical to the framework adopted by the New York statute in Gasperini" in that it effectively "provides a control over damages that operates similar to a cap" by "forbid[ding] arbitrary awards." Even if there is no "pre-determined" limit for all cases, HIMA suggests that "the parties to a tort action should be able to conduct the analysis and determine a concrete range for a potential award." However, in our view, Puerto Rico's "exaggeratedly high" standard has not evolved through the articulation of these features in Fresenius into substantive law that compels a different outcome from Marcano Rivera.

HIMA appears to hang its hat on the statement in Fresenius

that to determine whether or not an award is "exaggeratedly high," a reviewing court "must examine the evidence filed before that forum and the amounts granted in similar cases previously resolved." 195 P.R. Dec. at 491 (citation omitted).[15] This is the instruction by which, according to HIMA, the Supreme Court of Puerto Rico "manifestly created substantive law applicable to tort claims in Puerto Rico." This, HIMA contends, has made the Puerto Rico standard more rigorous and thus the functional equivalent of New York's "deviates materially" standard, under which New York state courts also look to awards given in similar cases. See Gasperini, 518 U.S. at 425. However, to the extent that it relies on this statement, HIMA overstates its case, because the Fresenius court proceeded to clarify that "the compensations granted in previous cases constitute a useful starting point and reference for passing judgment on the concessions granted by the primary forum." 195 P.R. Dec. at 491 (emphasis added). The use of "must" and "useful starting point" in back-to-back sentences certainly adds a layer of confusion to interpreting the Puerto Rico Supreme Court's meaning, but the most sensible reading is that to

[15] For instance, Puerto Rico courts draw comparisons based on the cause of the victims' injuries and the victims' relationships to the plaintiffs. In Fresenius, the Supreme Court of Puerto Rico compared the amount awarded to plaintiff's children for the loss of their mother as a result of the defendant's medical malpractice related to hemodialysis to the amounts it had awarded to a son for the loss of his father due to a hospital's malpractice following a car crash, and to two children who lost their mother due to the staff's neglect at a mental health clinic. 195 P.R. Dec. at 502-03.

the extent that Fresenius changed anything by articulating the importance of consulting comparator cases, it is that these cases are to be used as guideposts (i.e., something "useful" to be considered), not as mandatory requirements. See id. at 491, 493. This interpretation is consistent with precedent dating back decades. See Soc. De Gananciales v. F.W. Woolworth & Co., 143 P.R. Dec. 76, 81-82 (1997) (per curiam) (certified translation) ("[I]n order to determine whether or not the assessment of damages in a specific case is appropriate, it is certainly useful to examine the sums awarded by this Court in previously similar cases, without implying they can be considered as mandatory precedents."); Rodríguez Cancel, 16 P.R. Offic. Trans. at 552-553 (citing Widow of Silva v. Soc. Española de Auxilio Mutuo & Great Am. Ins. Co., 100 P.R.R. 30 (1971); Baralt v. García, 78 P.R.R. 123 (1955) (per curiam)) ("That is why -- although it is advisable that trial courts be guided by the amounts awarded by this Court in 'similar' cases -- the decision rendered in a specific case with regard to this matter cannot operate as binding precedent on another case.").

Furthermore, in constructing its argument, HIMA places great weight on the Fresenius court's statements (echoing Herrera) that "[it was] obliged to warn the judges about the importance of detailing in their opinions the cases that are used as reference or starting point[s] for the estimation and assessment of damages," and

that "it is necessary to explain which cases are used as a reference and how the amounts granted are adjusted in such cases prior to the case before the court." 195 P.R. Dec. at 493. However, the opinion makes quite clear that the actual impetus for those statements was the Puerto Rico Supreme Court's frustration with the fact that the "primary forum did not mention in its opinion what similar cases it used as a guide" or "explain the calculation that was made to determine the amounts granted" despite the fact that it had indicated that "it had carried out an analysis of those cases." Id. at 492-93. In context, the directive behind the court's lament is clear: if and when courts look to comparator cases (which are not meant to dictate a specific award in a specific case, even if the facts are similar), they must take great care to identify which cases they are looking to and how they calculate or recalculate their awards.

In any event, it is unclear that urging courts to consult awards granted in prior similar cases to determine whether an award is "exaggeratedly high" would necessarily upgrade the Puerto Rico standard from procedural to substantive law. See Arpin v. United States, 521 F.3d 769, 776 (7th Cir. 2008) ("[W]hether or not to permit comparison evidence in determining the amount of damages to award in a particular case is a matter of procedure rather than of substance, as it has no inherent tendency (as does a rule requiring heightened review of damages awards challenged as excessive, as in Gasperini

. . .) either to increase or decrease the average damages award; the tendency is merely to reduce variance."). After all, in Gasperini, it was not the use of comparison evidence per se that made the "deviates materially" standard substantive law, for New York courts had "also referred to analogous cases" under its preceding version of the "shock the conscience" test. Gasperini, 518 U.S. at 425. What moved the needle was the Supreme Court's determination that the standard itself "in design and operation, influence[d] outcomes by tightening the range of tolerable awards." Id. There is simply no language in Fresenius that indicates that the "useful starting point" of "examin[ing] . . . the amounts granted in similar cases" is the equivalent of a functional statutory cap on damages like New York's § 5501(c) that locks medical malpractice awards within the pre-determined range set by prior awards. Fresenius, 195 P.R. Dec. at 491.

Relatedly, that Fresenius endorses a particular method for updating the value of awards granted in prior similar cases to the present value does not tip the scales in our Gasperini analysis. Prescribing a formula for adjusting for inflation is a matter of procedural law, regardless of whether the Supreme Court of Puerto Rico had cemented it before or after our decision in Marcano Rivera. As HIMA itself acknowledges, Fresenius merely takes care to reiterate a particular formula for expressing the value of prior awards in

modern-day economic terms to facilitate an accurate comparison between cases over time. Specifically, because of a lingering disagreement among experts, the decision endorsed the use of a two-step method for adjusting prior award amounts for inflation based on the incorporation of the consumer price index reported by the Puerto Rico Department of Labor and Human Resources. See id. at 495-98 (citing Rodríguez, 186 P.R. Dec. at 941). There is, however, no basis on which to hold that Puerto Rico's "exaggeratedly high" standard is now so much more rigorous that it departs from the federal "grossly excessive" standard because of this computational feature, which cannot be said to materially impact the outcome of the remittitur analysis.

Accordingly, we have no difficulty concluding that even after Fresenius, Puerto Rico's "exaggeratedly high" standard still does not depart from the federal "grossly excessive" standard.[16]

[16] Because we decide that Puerto Rico law is procedural, we need not decide whether federal courts can enforce the "substantive thrust" of the "comparative standard" without unsettling the federal scheme of jury trials in civil cases under the Seventh Amendment. Whereas Gasperini dealt with the Reexamination Clause, here, it is the "trial by jury" Clause that comes into view because there are no jury trials in the Puerto Rico civil system. See González-Oyarzún v. Caribbean City Builders, Inc., 798 F.3d 26, 27-29 (1st Cir. 2015) (per curiam). As the thinking goes, the primary concern would be that applying the comparative standard as binding substantive state law in federal court could undermine the Seventh Amendment right to a jury trial by requiring federal courts to draw comparisons to Puerto Rico cases whose damages awards were determined in the first instance by judges and not juries. However, as stated above, we do not reach this question.

Therefore, the district court correctly applied the federal standard in its remittitur analysis. Accordingly, it did not abuse its discretion in remitting the verdict.

III. CONCLUSION

We therefore affirm the district court's denial of HIMA's motion for judgment as a matter of law as well as its remitted verdict.

Affirmed.