



By the order of the court, Judge David A Wiseman

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1 FOR PUBLICATION

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5 **IN THE SUPERIOR COURT**
6 **OF THE**
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 **ROSA B. CAMACHO,**) **CIVIL CASE No. 07-0484**
9 Plaintiff,)
10 v.) **ORDER GRANTING IN PART AND**
11 **COMMONWEALTH HEALTH**) **DENYING IN PART DEFENDANT’S**
12 **CENTER, DEPARTMENT OF PUBLIC**) **MOTION FOR NEW TRIAL AND/OR**
13 **HEALTH AND ENVIRONMENTAL**) **TO ALTER OR AMEND JUDGMENT**
14 **SERVICES, SABLAN TOPLINE**)
15 **COMPANY, LLC,**)
16 Defendants.)

17 **INTRODUCTION**

18 THIS MATTER came before the Court on January 9, 2014, at 1:30 p.m. in Courtroom 223 on the
19 Defendants’ Motion for a New Trial and/or to Alter or Amend Judgment pursuant to Rule 59(e) of the
20 Commonwealth Rules of Civil Procedure. Defendants filed their motion on November 22, 2013, and were
21 represented by Assistant Attorney General Dave Lochaby. Plaintiff opposed Defendants’ Motion on
22 December 17, 2013, and was represented by David G. Banes, Esq. Finally, Defendants’ filed their reply on
23 December 26, 2013.

24 Based upon a review of the filings, oral argument, applicable laws, and similar cases before the
25 Commonwealth’s Superior Court, the Court **GRANTS** in part and **DENIES** in part Defendant’s Motion for
a New Trial and/or to Alter or Amend Judgment for the following reasons.

1 **BACKGROUND**

2 On August 21, 2013, Plaintiff filed a Memorandum in Support of her Request for Damages, wherein
3 Plaintiff requested special damages, damages for both past and future pain and suffering, and loss of
4 enjoyment of life, totaling in grand sum \$290,720.17, plus court costs and post-judgment interest. This
5 grand total further reflects a twenty-five percent reduction requested by Plaintiff due to other aggravating
6 factors regarding her condition, as the original total damages alleged by Plaintiff was \$384,895.17. On
7 October 24, 2013, the Court issued an Order Re: Damages, rendering a decision on the amount of damages
8 in each category as requested by Plaintiff in the underlying bench trial.

9 On November 7, 2013, the Court entered a final judgment in the underlying bench trial, pursuant to
10 the Court’s previous October 24, 2013 Order Re: Damages, setting damages in the total amount of
11 \$133,140.17. Specifically, special damages totaled \$2,915.17; past pain and suffering damages amounted
12 to \$34,600.00; future pain and suffering damages totaled \$45,625.00; and loss of enjoyment of life damages
13 amounted to \$50,000.00. By the Court’s own calculation, the final award of damages amounted to 45.8%
14 of the total damages award requested by Plaintiffs, as well as 34.6% of the original amount requested before
15 the requested reduction due to aggravating factors was applied.

16 On November 22, 2013, Defendants filed a Motion for a New Trial and/or to Alter or Amend
17 Judgment, claiming that “the Court made clear errors in the conduct of the trial . . . which, without
18 correction, constitute a manifest injustice to the Commonwealth Defendants.” (Def.’s Mot., at 2.) First,
19 Defendants argue that the Court “must alter or amend the judgment to conform to the requirements of the
20 [Government Liability] Act,” or specifically, limit the judgment to \$100,000 pursuant to 7 CMC § 2202.
21 (*Id.*) Second, Defendants claim that the noneconomic, non-punitive damages awarded in the underlying case
22 were excessive, and points the Court to various sources and cases from other jurisdictions, as there are no
23 similar cases within the Commonwealth. (*Id.*, at 3-6.) Third, Defendants claim that the Court did not apply
24 comparative fault, and that Plaintiff’s testimony was disregarded by the Court. (*Id.*, at 7-8.) Defendants
25 argue that these alleged oversights constitute clear error, and thus they are entitled to a new trial.

1 On December 17, 2013, Plaintiff opposed Defendants’ motion on the basis that each of Defendants’
2 arguments in support of their request for a new trial are without merit. (Pl.’s Opp., at 1.) However, Plaintiff
3 concedes in the application of the Government Liability Act as to the cap on the amount of damages
4 recoverable from a governmental entity. (*Id.*) Further, Plaintiff argues that the Court’s noneconomic
5 damages award is not excessive, keeps with the general pattern presented by the sources cited by Defendants,
6 and that comparative fault was applied by the Court when it reduced the total amount of damages awarded
7 by fifty percent. (*Id.*, at 3-4.). Lastly, Plaintiff argues there is no legal authority for the position that the
8 Court should grant a new trial where it “disregards” a witness’ testimony, and that the Court has already
9 addressed this objection on the same grounds in its previous order. (*Id.*, at 5.)

10 On December 26, 2013, Defendants filed a reply to Plaintiff’s opposition, arguing that the out-of-
11 jurisdiction treatises and cases should be properly regarded as persuasive authority due to the lack of local
12 case law, as well as presenting further case law that supports their position. (Def.’s Reply, at 2-5.) Lastly,
13 Defendants claim that the Court’s reduction of the total damages award by 50% “in view of aggravating
14 factors” effectively constitutes an acknowledgment of comparative fault without employing its theory. (*Id.*)

15 DISCUSSION

16 Rule 59 of the Commonwealth Rules of Civil Procedure endows the Court with great discretion in
17 granting to all or any of the parties or on all or part of the issues a new trial, or in the alternative – and where
18 feasible – modifying a judgment after one has been entered. Specifically, Rule 59(a) reads, in relevant part:
19 “[o]n a motion for a new trial in an action tried without a jury, the court may open the judgment if one has
20 been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings
21 and conclusions, and direct the entry of a new judgment.” NMI R. Civ. P. 59(a). Further, Rule 59(e)
22 controls motions for reconsideration, providing that “[a] motion to alter or amend the judgment shall be
23 served not later than ten days after entry of the judgment.” NMI R. Civ. P. 59(e).

24 The standard employed by courts in the Commonwealth tracks that of the Federal Rules of Civil
25 Procedure, which state that the major grounds justifying granting a Rule 59 motion involve (1) an

1 intervening change in the controlling law, (2) the availability of new evidence, (3) the need to correct a clear
2 error, or (4) to prevent manifest injustice. *See Commonwealth v. Eguia*, 2008 MP 17 ¶ 7; *Camacho v. J.C.*
3 *Tenorio Enter. Inc.*, 2 N Mar. I. 407, 414 (1992) (quoting Charles Wright, et al., *Federal Practice and*
4 *Procedures: Jurisdiction* § 4478 (1981)).

5 As Defendants do not allege the first two grounds for amending a judgment – intervening changes
6 in controlling law and the availability of new evidence – the Court will evaluate each of Defendants’ claims
7 in the context of the need to correct a clear error or to prevent a manifest injustice. That is, the Court will
8 evaluate, in turn, the application of the Government Liability Act, the award of noneconomic damages, the
9 application of comparative fault, and the testimony of Plaintiff in the underlying trial.

10 **I. THE GOVERNMENT LIABILITY ACT SHOULD HAVE BEEN APPLIED**

11 First, Defendants argue that the Government Liability Act, codified as 7 CMC § 2201, *et. seq.*,
12 should have been applied by the Court in its award of damages. The Government Liability Act (hereinafter
13 “the Act”) provides a limited waiver of sovereign immunity in order to allow suit by persons harmed by
14 allegedly tortious actions of government employees acting within the scope of their employment.

15 Specifically, section 2202 of the Act, entitled “Limitation of Tort Liability,” provides:

16 (a) The Commonwealth government shall be liable in tort for damages arising from
17 the negligent acts of employees of the Commonwealth acting within the scope of
their office or employment; provided that:

18 (1) The Commonwealth and any employee engaged in the performance of
19 services on behalf of the Commonwealth shall not be liable in tort for more
20 than \$50,000 in an action for wrongful death. **Liability in other tortious
occurrences shall be limited to \$100,000 per person**, or \$200,000 per
occurrence.

21 7 CMC § 2202(a)(1) (emphasis added).

22 Defendants claim the Commonwealth has not waived its sovereign immunity other than as expressed
23 in the act, and that this Court must alter or amend the judgment to conform to the requirements of the Act.
24 As part of its judgment in the underlying bench trial, the Court previously rejected Defendants’ argument
25 that CHC was not a public utility and found it to be a governmental entity open to the public which owed

1 Plaintiff a higher duty of care. (Order Overruling Objections to Findings of Fact and Conclusions of Law,
2 at 3.) However, in finding that Defendants are a government entity, the Court should have – and likely
3 would have, had Defendants put it on notice and requested so – properly applied the standards of the Act
4 to the judgment entered as to damages in the underlying bench trial. Plaintiff does not rebut, and in fact,
5 concedes Defendants’ arguments regarding the application of the Act to the damages awarded by the Court.

6 Therefore, pursuant to the requirements of § 2202(a)(1) of the Government Liability Act, the Court
7 finds it necessary to amend or alter the judgment previously entered regarding damages in order to correct
8 a clear error and prevent a manifest injustice to Defendants, and hereby grants in part Defendants’ motion.
9 A concurrent order will be issued amending the total damages award to reflect compliance with the Act.

10 **II. NONECONOMIC DAMAGES AWARDED ARE NOT EXCESSIVE**

11 Second, Defendants claim that the noneconomic damages awarded by the Court are excessive in light
12 of the ration between economic and noneconomic damages exceeding acceptable levels provided by cases
13 in other jurisdictions.

14 The CNMI Supreme Court previously stated that “[t]he trial court’s determination regarding damages
15 was a finding of fact, and, as such, “shall not be set aside unless clearly erroneous.” *Ito v. Macro Energy,*
16 *Inc.*, 4 NMI 46, at ¶ 41 (1993) (citing Com. R. Civ. P. 52(a)). The Supreme Court evaluated two cases
17 evaluating allegedly excessive damage awards received by plaintiffs under the Federal Tort Claims Act,
18 specifically *Shaw v. United States*, 741 F.2d 1202 (9th Cir. 1984), and *Trevino v. United States*, 804 F.2d
19 1512 (9th Cir. 1986), cert. denied, 484 U.S. 816, 108 S. Ct. 70, 98 L. Ed. 2d 34 (1987). The CNMI Supreme
20 Court found, and subsequently agreed, that in both of the above cases the Ninth Circuit held that damage
21 awards are reviewed for “clear error.” *Trevino*, 804 F.2d at 1514-15; *Shaw*, 741 F.2d at 1205.

22 The CNMI Supreme Court further pointed out, and this Court believes it bears repeating, that the
23 court in *Trevino* further opined:

24 The award is clearly erroneous if, after a review of the record, we are “left
25 with the definite and firm conviction that a mistake has been committed.” *Id.*
(quoting *United States v. United States Gypsum Co.*, [333 U.S. 364, 395, 68

1 S. Ct. 525, 542, 92 L. Ed. 746] (1948)). To determine whether a given award
2 is excessive, we look to the relevant state's case law on excessive awards. *Id.*
3 The state of Washington considers awards excessive “only if the amount
4 shocks the court's sense of justice or sound judgment” and if it “appears that
5 the trial judge was swayed by passion or prejudice.” 741 F.2d at 1209. **To
6 make that determination, we compare the challenged award to awards
7 in similar cases in the same jurisdiction.** *Id.* The choice of a discount rate,
8 used to adjust to present value an award based on an income stream spread
9 over time and, at the same time, to adjust for the effects of inflation, should
10 be reviewed for an abuse of discretion.

11 Trevino, 804 F.2d at 1515 (citing *Shaw*, 741 F.2d at 1205) (emphasis added).

12 Eventually, the CNMI Supreme Court aligned itself with the persuasive authority of the above-
13 mentioned Ninth Circuit cases, yet found that the charge of finding a similar case within the jurisdiction to
14 be a difficult one, as “[t]here is no Commonwealth case respecting excessive damage awards.” *Ito*, 4 NMI
15 at ¶ 42. Defendants themselves recognize that there are still no Commonwealth cases respecting excessive
16 noneconomic, non-punitive damage awards, and contends that, as such, the Court must look to sources from
17 other jurisdictions.

18 However, the Supreme Court did not find this to be necessary, as it found solace in the approach
19 taken by Washington state courts, finding that “a damage award should be considered excessive only if the
20 amount shocks the court's sense of justice or sound judgment.” *Id.* (citing *Harvey v. Wight*, 68 Wash. 2d
21 205, 412 P.2d 335, 337-38 (Wash. 1966)). Furthermore, the Supreme Court took another page from the
22 Ninth Circuit in its aim to “insure that the trial judge was not swayed by passion or prejudice.” *Id.* (citing
23 *Shaw*, 741 F.2d at 1209.) Moreover, the Supreme Court provided that “[i]f the damage award passes these
24 subjective tests, then we will review for an abuse of discretion the trial court’s choice of a discount rate,
25 inflation rate, and any other figures used in calculating a present value award.” *Id.* (citing *Trevino*, 804 F.2d
at 1515.)

Here, Defendants attempt to skew the Court’s evaluation of its own damages award by introducing
out-of-jurisdiction cases and treatises they contend are to be considered persuasive authority in the absence
of clearly similar cases with which to guide the Court’s analysis. However, the Court’s reading of the

1 CNMI's Supreme Court's binding authority cited by both Defendants and Plaintiff obviates the need to
2 compare this Court's damages award – especially and including the ratio of noneconomic to economic
3 damages – to cases in other jurisdictions. The CNMI has adopted its own standard of scrutiny for evaluating
4 whether a damages award is excessive, and this Court will assess its award through that lens only, not in the
5 erroneous, less-than-persuasive authority Defendants cite in their attempt to thrust a separate standard upon
6 the Court for the purposes of this motion. The Court finds that Defendants' in-depth analysis of out-of-
7 jurisdiction treatises and cases is merely an attempt to relitigate the Court's previously rendered judgment
8 regarding the amount of damages from each category requested, a subject which has been fully briefed in
9 previous submissions to the Court, as well as decided fully and finally upon issuance of the instant order.

10 Thus, with the aforementioned framework guiding the Court's analysis, the Court will evaluate each
11 subjective test as contemplated by the CNMI Supreme Court. Here, as in *Ito*, the Court would be strained
12 to say that the figure awarded, even before the adjustment to comply with the Government Liability Act, as
13 contemplated above, "shocks the court's sense of justice or sound judgment." *Harvey*, 412 P.2d at 337-38.
14 It could be said, however, that the amount requested by Plaintiffs in her brief did so, and therefore the Court
15 saw fit to reduce the noneconomic damages contemplated by more than fifty (50) percent. The figures and
16 method of calculating such damages was subject to debate in court as well as through the written materials
17 of each party, and the Court rendered judgment – complete with all of the required figures and methods –
18 in its October 24, 2013 Order re: Damages. Now, after the concurrent adjustment made by the Court in a
19 separate order and reducing the total award to \$100,000, it cannot be said that the final award of damages
20 approaches the threshold of "shocking the court's sense of justice or sound judgment."

21 Further, it cannot be said that the undersigned was "swayed by passion or prejudice" in rendering
22 its decision, as it took the standard objective stance in evaluating the amounts requested by Plaintiff in her
23 briefs submitted to the Court. In fact, this Court's reduction of the award by nearly 75% – from the original
24 requested amount to the amount the award is hereby amended to – suggest the Court was not swayed by any
25 passion or prejudice Defendants may allege exists. Lastly, as this Court cannot review its own findings for

1 abuse of discretion, it merely points Defendants to the above analysis regarding the figures and method of
2 calculating the damages ultimately awarded to Plaintiff, and hereby amended to comply with the
3 Government Liability Act. Each figure was taken directly from Plaintiff's brief regarding damages,
4 complete with comprehensive supporting evidence. The Court then rendered judgment on each request,
5 accepting some figures yet rejecting others as unnecessary or unwarranted given the circumstances.

6 Thus, the Court does not find that the final damages amount awarded to Plaintiff fails to meet any
7 of the subjective tests contemplated by the CNMI Supreme Court, especially in the absence of any similar
8 cases from this jurisdiction. Accordingly, the Court finds the amount awarded to Plaintiff not to be
9 excessive in light of the Court's calculation and use of its sound discretion in accepting and rejecting certain
10 figures to be awarded when viewing the cases in the totality of the circumstances presented at trial, and
11 DENIES Defendant's motion for a new trial and/or to alter or amend judgment on this basis.

12 **III. Application of Comparative Fault Unnecessary**

13 Lastly, Defendants argue that the Court, by and through Plaintiff's own testimony, should have found
14 comparative fault and reduced the final judgment amount by an appropriate percentage. Plaintiff argues that
15 either the Court found there was no comparative fault, or in the alternative, the Court found comparative
16 fault and applied it in its reduction of Plaintiff's requested damages by some fifty percent.

17 The Court declares that while no explicit finding of comparative fault was made, the Court's
18 reduction of Plaintiff's total requested damages by fifty percent was influenced by both aggravating factors
19 brought to the attention of the Court by evidence introduced at trial, as well as Defendants' own objections
20 at the briefing stage. Furthermore, by the Court's own calculation, the November 7, 2013 Judgment
21 awarding damages amounted to 45.8% of the total damages award requested by Plaintiffs, as well as 34.6%
22 of the original amount requested before the requested reduction due to aggravating factors was applied.
23 After the concurrent Order amending the Court's previous final judgment, the damages amount awarded will
24 reflect a seventy-four (74) percent reduction from the original amount requested by Plaintiff, a sixty-six (66)
25 percent reduction from the amount considered by the Court after the Plaintiff's requested reduction, and a

1 twenty-three (23) percent reduction from the amount awarded in the Court’s previous Judgment.

2 Thus, the Court finds that no clear error has occurred in failing to explicitly find and clearly calculate
3 comparative fault, as its reduction from the total amount requested by Plaintiff reflects any fault or
4 aggravating circumstances attributed to Plaintiff as proven by evidence presented at trial. Finally, the Court
5 finds it unnecessary to address Defendants’ argument regarding Plaintiff’s testimony, as the Court already
6 found – in its June 30, 2013 Order Overruling Objections to Findings of Fact and Conclusions of Law – that
7 the Court did not err in finding a lack of credibility, and it properly took Plaintiff’s lack of credibility at trial
8 into consideration in rendering its final judgment on damages (as so reflected in the Court’s ultimate
9 reduction of the total award by more than fifty percent).

10 Accordingly, the Court DENIES Defendants’ motion for a new trial and/or to alter or amend
11 judgment on these bases.

12 **CONCLUSION**

13 For the reasons set forth above, the Court hereby **GRANTS IN PART** and **DENIES IN PART**
14 Defendant’s motion for a new trial and/or to alter or amend judgment pursuant to Commonwealth Rules of
15 Civil Procedure Rule 59(e). A concurrent order will be issued detailing the amendment to the Court’s
16 previous judgment, so as to comply with the requirements of the Government Liability Act.

17
18 **SO ORDERED** this 14th day of August, 2014.

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20 / s /
21 David A. Wiseman, Associate Judge
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