"In numerous contexts, gatekeeping judicial determinations prevent submission of claims to a jury's judgment without violating the Seventh Amendment."[62] Thus, in order to screen out frivolous complaints or defenses, Congress "has power to prescribe what must be pleaded to state the claim, just as it has the power to determine what must be proved to prevail on the merits. It is the federal lawmaker's prerogative, therefore, to allow, disallow, or shape the contours of—including the pleading and proof requirements for . . . private actions."[63] A "heightened pleading rule simply 'prescribes the means of making an issue,' and . . . , when '[t]he issue [is] made as prescribed, the right of trial by jury accrues.'"[64]

Directed Verdicts.—In 1913, in *Slocum v. New York Life Ins. Co.*,[65] the Court held that a federal appeals court lacked authority to order the entry of a judgment contrary to the verdict in a case in which the federal trial court should have directed a verdict for one party, but the jury had found for the other party contrary to the evidence; the only course open to either court was to order a new trial. Although plainly in accordance with the common law as it stood in 1791, the five-to-four decision was subjected to a heavy barrage of professional criticism based on convenience and urging recognition of capacity for growth in the common law.[66] *Slocum* was then impaired, if not completely undermined, by subsequent holdings.[67]

In the first of these cases, the Court held that a trial court had the right to enter a judgment for the plaintiff on the verdict of the jury after having reserved decision on a motion by the defendant for dismissal on the ground of insufficient evidence.[68] The Court distinguished *Slocum* and noted that its ruling qualified some of its

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review a district court's denial of a motion to set aside an award as excessive under an abuse of discretion standard. Gasperini v. Center for Humanities, Inc., 518 U.S. 415 (1996) (New York law that requires appellate courts to order a new trial when a jury award "deviates materially from what would be reasonable compensation" may be applied by a federal district court exercising diversity jurisdiction, "with appellate control of the trial court's ruling limited to review for 'abuse of discretion'").

[62] Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 327 n.8 (2007).

[63] 551 U.S. at 327.

[64] 551 U.S. at 328 (quoting Fidelity & Deposit Co. of Md. v. United States, 187 U.S. 315, 320 (1902)).

[65] 228 U.S. 364 (1913).

[66] F. James, Civil Procedure 332–33 & n.8 (1965).

[67] *But see* Hetzel v. Prince William County, 523 U.S. 208 (1998) (when an appeals court affirms liability but orders the level of damages to be reconsidered, the plaintiff has a Seventh Amendment right either to accept the reduced award or to have a new trial).

[68] Baltimore & Carolina Line v. Redman, 295 U.S. 654 (1935).