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3 malpractice coverage under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 2671-2680.
4 See Docket # 75 at 4. Accordingly, this Court has federal question jurisdiction over the present
5 action for all claims after January 1, 2004. Plaintiffs have also brought claims under the
6 Commonwealth of Puerto Rico’s general tort statutes, Articles 1802 and 1803 of the Puerto
7 Rico Civil Code, P.R. Laws Ann. tit. 31, §§ 5141 & 5142, against GCHC and Miranda for
8 alleged malpractice occurring before 2004.

9 Responding to the Article 1802 claims, Miranda has brought the present motion to
10 dismiss alleging that the lack of a federal question claim before 2004 bars any Commonwealth
11 law claims from preceding years. To defend this assertion, Miranda offers the following
12 syllogism:

13 The only cause of action, as claimed by plaintiff, against Miranda arises from
14 state law, specifically under Article 1802 of the Civil Code. This cause of action
15 cannot, by itself, create federal jurisdiction between plaintiffs and Miranda. In
16 order to prevail, plaintiff has to assert and prove that during Miranda’s
17 intervention with Roman, the FTCA is applicable. Nevertheless, the Department
18 of Health and Human Services has certified that the GCHC was not eligible for
funds from the FTCA. Consequently, said legislation is inapplicable for the years
2001 and 2002, thus there is no federal question that can be asserted for those
years. If there is no federal question that can establish federal jurisdiction and
there is no diversity among parties, there is no jurisdiction regarding Miranda’s
cause that could only be asserted at State Court.

19 See Docket # 75 at 5. Plaintiffs have opposed this conclusion, arguing that this Court does
20 entertain jurisdiction over the claims against Miranda because they arise from the same
21 treatment continuum, and are thus covered by supplemental jurisdiction.

22 **Standard of Review**
FED. R. CIV. P. 12(b)(1)

23 FED. R. CIV. P. 12(b)(1) is the proper vehicle for challenging a court’s subject matter
24 jurisdiction. Valentín v. Hospital Bella Vista, 254 F.3d 358, 362-63 (1st Cir. 2001). Under this
25 rule, a wide variety of challenges to the Court’s subject matter jurisdiction may be asserted,
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3 among them those based on sovereign immunity, ripeness, mootness, and the existence of a
4 federal question. Id. (citations omitted). When faced with a similar jurisdictional challenge,
5 this Court must “. . . give weight to the well-pleaded factual averments in the operative
6 pleadings [. . .] and indulge every reasonable inference in the pleader’s favor.” Aguilar v. U.S.
7 Immigration and Customs Enforcement Div. of Dept. of Homeland Sec., 510 F.3d 1, 8 (1st
8 Cir.2007).

9 A plaintiff faced with a motion to dismiss for lack of subject matter jurisdiction has the
10 burden to demonstrate that such jurisdiction exists. See Lord v. Casco Bay Weekly, Inc., 789
11 F. Supp. 32, 33 (D. Me. 1992); see also SURCCO V. PRASA, 157 F. Supp. 2d 160, 163 (D.
12 P.R. 2001). However, in order for a plaintiff’s claim to be dismissed for lack of subject matter
13 jurisdiction, due to the inadequacy of the plaintiff’s federal claim, that claim must be “. . . so
14 insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely
15 devoid of merit as not to involve a federal controversy.” Oneida Indian Nation of N.Y. v.
16 County of Oneida, 414 U.S. 661, 666 (1974). In this context, this Court is empowered to resolve
17 factual disputes by making reference to evidence in the record beyond the plaintiff’s allegations
18 without having to convert the motion to dismiss into one for summary judgment. See Lord, 789
19 F. Supp. at 33 (D. Me. 1992); see also SURCCO, 157 F. Supp. 2d at 163. “Where a party
20 challenges the accuracy of the pleaded jurisdictional facts, the court may conduct a broad
21 inquiry, taking evidence and making findings of fact.” Hernández-Santiago v. Ecolab, Inc., 397
22 F. 3d 30 (1st Cir. 2005). Therefore, the court may consider extrinsic materials, “and, to the
23 extent it engages in jurisdictional fact-finding, is free to test the truthfulness of the plaintiff’s
24 allegations.” Dynamic, 221 F. 3d at 38. That is, the principle of conversion of a motion to
25 dismiss into a motion for summary judgment when extrinsic materials are reviewed, does not
26 apply in regards to a motion to dismiss for lack of subject matter jurisdiction. Id.

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3 **Applicable Law and Analysis**

4 The question before this Court is whether supplemental federal jurisdiction should apply
5 to Plaintiffs' pre-2004 claims. Federal courts have exercised some form of supplemental
6 jurisdiction since the early 19th Century. Osborn v. Bank of the United States, 22 U.S. (9
7 Wheat.) 738, 823 (1824). With regards to pendant party jurisdiction, the Congress has stated
8 that it "shall include claims that involve the joinder or intervention of additional parties." 28
9 U.S.C. § 1367(a). This language originates from 1990 Congressional legislation that superseded
10 Finley v. United States, 490 U.S. 545, 109 S. Ct. 2003, 104 L. Ed. 2d 593 (1989), a case that
11 had rejected pendant party jurisdiction. Alvarez Torres v. Hosp. Ryder Mem., Inc., 308 F. Supp.
12 2d 38, 41 (D.P.R. 2004). Accordingly, the abovementioned policy in § 1367(a) aims ". . . to
13 permit a case – one common nucleus of operative facts – to be tried in a single court[,]” and
14 thus avoid having to bring suit in two different forums. Erwin Chemerinsky, Federal
15 Jurisdiction 351 (5th ed. 2007). Circuit courts have stated that “[t]he question under section
16 1367(a) is whether the supplemental claims are so related to the original claims that they form
17 part of the same case or controversy, or in other words, that they ‘derive from a common
18 nucleus of operative fact.’” Mendoza v. Murphy, 532 F.3d 342, 346 (5th Cir. 2008) (citing
19 United Mine Workers of America v. Gibbs, 383 U.S. 715, 725, 86 S. Ct. 1130, 16 L. Ed. 2d 218
20 (1966)).

21 In the present lawsuit, the federal and state are facially related to the same core factual
22 issues, which involve possible medical malpractice at GCHC between the years 2000 and 2006.
23 Plaintiffs claim that, throughout the treatment continuum, Roman's treating physicians acted
24 negligently in both the diagnosis and care offered, leading to the permanent mutilation of her
25 calf area. Given that Plaintiffs theory involves intertwining allegations of treatment from various
26 doctors, during several years, should medical negligence be found, it is highly probable that

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3 GCHC, Miranda, and the United States would be found jointly and severally liable. Therefore,
4 this Court concludes that Plaintiffs Article 1802 and FTCA claims originate from a common
5 nucleus of operative facts, and splitting the causes of action would do nothing to promote
6 judicial efficiency or the interests of justice.

7 In light of the above, this Court finds that supplemental, or pendant party, federal
8 jurisdiction exists over Plaintiffs' pre-2004 claims against GCHC and Miranda. Accordingly,
9 the motion to dismiss is **DENIED**.

10 **IT IS SO ORDERED.**

11 In San Juan, Puerto Rico, this 9th day of July, 2009.

12 *S/ Salvador E. Casellas*
13 SALVADOR E. CASELLAS
14 United States District Judge
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