Nova Law Review

Volume 39, *Issue* 2 2017 *Article* 2

Getting Your Case Into Federal Court: A Comprehensive Guide To Diversity Jurisdiction In The Eleventh Circuit

Susan D. Landrum*

*

Getting Your Case Into Federal Court: A Comprehensive Guide To Diversity Jurisdiction In The Eleventh Circuit

Susan D. Landrum

Abstract

One of the most basic tenets of federal judicial law is that a federal court must have subject matter jurisdiction in order to hear a case.1 Subject matter jurisdiction is conferred upon the courts by the U.S. Constitution or federal statutes.

KEYWORDS: diversity, citizenship, aliens

GETTING YOUR CASE INTO FEDERAL COURT: A COMPREHENSIVE GUIDE TO DIVERSITY JURISDICTION IN THE ELEVENTH CIRCUIT

SUSAN D. LANDRUM*

I. FEDERAL DIVERSITY JURISDICTION: INTRODUCTION 182
II. STATUTORY FOUNDATIONS OF DIVERSITY JURISDICTION AND GENERAL RULES OF APPLICATION 184
III. DETERMINING THE AMOUNT IN CONTROVERSY 186
A. *Burden of Demonstrating that Amount in Controversy Has Been Met* 186
B. *"Legal Certainty" Requirement for Dismissal Based on Failure to Meet Amount in Controversy Requirement* 187
C. *Timing of Amount in Controversy Determination for Removal Cases* 188
D. *Calculating Amount in Controversy* 188
1. Law Regarding Aggregating Claims to Meet Amount in Controversy Requirements 188
a. *Aggregation of Multiple Claims by Plaintiff(s) Against a Single Defendant* .. 188
b. *Aggregating Claims Against Multiple Defendants* 189
c. *Aggregation in the Context of Class Actions* 189
2. Methods of Determining Amount in Controversy in Removal Cases 189
3. Determining Amount in Controversy in Cases Involving Only Declaratory and Injunctive Relief 190
4. Determining Amount in Controversy for Specific Performance Cases 191
5. Challenges to Arbitration Awards and the Amount in Controversy Requirement 191
E. *Effect of Subsequent Events* 192

* Assistant Dean for Academic Achievement, St. John's University School of Law. Dean Landrum earned her J.D. from The Ohio State University Moritz College of Law and her Ph.D. in history from The Ohio State University. She has previously served as a staff attorney at the United States Court of Appeals, Eleventh Circuit. The author would like to thank Catherine Munro for her comments and feedback on this Article.

F. *Relevance of State Law to Determination of Amount in Controversy* 193
IV. DETERMINING DIVERSITY OF CITIZENSHIP 193
A. *Rules Related to Pleading Diversity of Citizenship Exists* 194
1. The Rule for Cases Filed Originally in District Court 194
a. *Requirements Under FRCP 8* 194
b. *Timing: Diversity Jurisdiction Is Determined as of Date that the Action Was Filed* 194
i. Post-filing Changes in Citizenship Do Not Matter for Purposes of Diversity Jurisdiction 194
ii. The Substitution of Parties Under FRCP 25(c) Does Not Defeat Diversity Jurisdiction 195
iii. Permissive Intervention of a Party Under FRCP 24 Does Not Destroy Diversity Jurisdiction 195
iv. Plaintiff Cannot Later Amend Complaint to Add Nondiverse Defendant 196
v. In Evaluating Diversity, the Court Should Realign Parties According to Their Real Interests 196
c. *Curing Defects in Diversity Jurisdiction* 196
i. Courts May Use FRCP 21 to Drop Nondiverse Dispensable Parties 196
ii. Under Some Circumstances, Parties Can Cure Defective Allegations of Jurisdiction 197
iii. Limitations on a Party's Attempts to Cure Jurisdictional Allegations 198
2. Case Removed from State Court to Federal District Court 198
a. *Burden to Adequately Plead Diversity Is on the Defendant in a Removal Case* 199

b. *Specific Statutory Rules for Removal of Diversity Cases* 199
i. Fictitious Names ("Jane Does") Are Disregarded for Purposes of Determining Jurisdiction in Removal Cases..... 199
ii. Exception When Defendant Is Citizen of State in Which Action Was Brought 199
c. *Time For Determining Whether Diversity Exists for Purposes of Removal* 200
d. *Curing Faulty Citizenship Allegations in Removal Petitions* 201
e. *Effect of Subsequent Acts on Diversity Jurisdiction* 201
B. *Types of Parties* 201
1. Individuals 202
a. *General Rules* 202
b. *United States Citizens Living Abroad*..... 202
c. *Dual Citizenship* 203
d. *Permanent Resident Aliens* 204
e. *Other Aliens* 204
2. Corporations..... 204
a. *Domestic Corporations–Principal Place of Business* 204
i. The "Nerve Center" Test 204
ii. Application 206
b. *Domestic Corporation with Principal Place of Business Outside of United States* 206
c. *Foreign Corporations*..... 207
d. *Corporations Chartered Pursuant to Federal Law* 207
e. *Dissolved or Inactive Corporations*..... 208
3. Unincorporated Associations 208
a. *Limited Liability Companies (LLCs)* 209
b. *Partnerships: General and Limited*..... 209
c. *Syndicates* 209
d. *Unincorporated Joint Stock Companies* 210
e. *Unincorporated National Labor Unions*..... 210
f. *Unincorporated Business Trusts*..... 210

g. *The Exception: Sociedad en Comandita* 210
4. Receivers 211
5. Liability Insurance Companies 211
a. *Statutory Basis* 211
b. *Case Law Interpreting These Provisions* 212
6. Institutions of Higher Learning 213
7. Unincorporated Indian Tribes 213
8. Estates 213
9. Infants and Incompetents 214
10. States 214
11. State Agencies and State-Created Public Entities 214
a. *Test for Determining Whether a State Agency Is a Citizen of a State* 214
b. *Specific Examples* 215
i. State Universities 215
ii. A State Entity's Board of Trustees 215
iii. Florida Department of Health and Rehabilitative Services 215
iv. State Bar 216
v. Board of Commissioners of the Port of New Orleans 216
vi. Alabama State Docks Department 216
vii. Political Subdivisions, such as Municipalities or Counties 216
viii. Private Probation Companies as Officers of the Court 217
12. Specific Diversity Rules for Aliens 217
a. *Statutory Basis for Alienage Jurisdiction* 217
b. *Case Law Analyzing Alienage Jurisdiction* 217
c. *Foreign States* 218
C. *Complete Diversity Rule* 219
D. *Exceptions to Complete Diversity Rule* 219
1. Court May Ignore Citizenship of a Plaintiff that Has Independent Basis of Original Federal Jurisdiction Against Defendant 219

2. Court May Properly Exercise Diversity Jurisdiction When Non-Diverse Defendant Is Sued Under Federal Law 220
3. Supplemental/Ancillary Claims Asserted Between Non-Diverse Defendants 220
4. Nominal Parties 221
5. Statutory Interpleader Under 28 U.S.C. § 1335 221
6. Class Actions 222
7. Total Diversity Rule and Alienage Jurisdiction 222
a. *Jurisdiction Under 28 U.S.C. § 1332(a)(2)* 222
b. *Jurisdiction Under 28 U.S.C. § 1332(a)(3)* 222
8. Removal Cases, When Non-Diverse Party Fraudulently Joined 222
E. *Exceptions Where Court Will Not Exercise Jurisdiction Even if Diversity Is Established* 224
1. Probate Exception 224
2. Domestic Relations Exception 224
a. *General Rule* 224
b. *Limitations to the Domestic Relations Exception* 225
c. *Examples* 225
3. Violations of 28 U.S.C. § 1359: Parties Improperly or Collusively Joined to Invoke Jurisdiction 226
V. SPECIAL RULES FOR CLASS ACTIONS AND MASS ACTIONS 226
A. *Class Actions versus Mass Actions* 227
B. *Amount-in-Controversy Requirements* 228
1. Amount-in-Controversy Requirements for Class Actions 228
2. Amount in Controversy Requirements for Mass Actions 230
C. *Diversity Requirements under CAFA* 230
1. Basic Requirements for Diversity 230
2. Federal Court's Discretionary Authority to Decline to Exercise Diversity Jurisdiction Over Some Class Actions 231
3. Federal Court Must Decline to Exercise Diversity Jurisdiction over Class Actions in Certain Circumstances 232

4. Statutory Limitations on a Federal Court's Exercise of Diversity Jurisdiction in Mass Action Removal Cases 234
5. The Defendant Has the Burden of Demonstrating that Diversity Jurisdiction Exists in Removal Cases. . 235
6. Timing of Citizenship Determination in Class Actions 235
7. Other Special Diversity Rules in Class Action and Mass Action Cases 235
a. *Only Named Parties Considered for Diversity Purposes* 235
b. *Citizenship of Unincorporated Associations* 235
VI. APPELLATE CONSIDERATIONS FOR CASES INVOLVING DIVERSITY JURISDICTION ISSUES 236
A. *Standard of Review* 236
B. *Adequacy of Diversity Allegations* 236
C. *Requirement that Appellate Court Sua Sponte Consider Whether Diversity Jurisdiction Exists* 237
D. *Objections Based on Lack of Subject-Matter Jurisdiction Can Be Raised at Any Time* 237

I. FEDERAL DIVERSITY JURISDICTION: INTRODUCTION

One of the most basic tenets of federal judicial law is that a federal court must have subject matter jurisdiction in order to hear a case.[1] Subject matter jurisdiction is conferred upon the courts by the U.S. Constitution or federal statutes.[2] These sources provide two primary bases of subject matter

1. *See* Arbaugh v. Y & H Corp., 546 U.S. 500, 514 (2006) (holding that "when a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety").

2. U.S. CONST. art. III, § 2.

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministers and Consuls; to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Id.; *see also infra* notes 3–6.

jurisdiction: Federal question jurisdiction[3] and diversity jurisdiction.[4] First, under 28 U.S.C. § 1331, federal district courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."[5] Alternatively, federal courts have subject matter jurisdiction over certain cases, based on diversity of citizenship, pursuant to 28 U.S.C. § 1332.[6]

With respect to diversity jurisdiction, some diversity cases originate in the federal district court, but others are removed by defendants from state to federal court pursuant to § 1441.[7] Regardless of their origin, in order to rely on the federal court's diversity jurisdiction, the parties must demonstrate that they meet the requirements for subject matter jurisdiction found in § 1332, including the minimum amount in controversy and diversity of citizenship.[8] Section 1332 provides specific jurisdictional requirements based upon the identity of the parties and whether a case is filed as a class action.[9]

Although the diversity jurisdiction requirements appear to be straightforward—at least as they are presented in the statute—their application has proved to be more complex over time.[10] An abundance of case law has developed regarding how the requirements for diversity jurisdiction should be interpreted; this Guide focuses on how the Eleventh Circuit Court of Appeals interprets them today.[11] Specifically, Part II sets out the statutory foundations of diversity jurisdiction.[12] Part III addresses Eleventh Circuit and Supreme Court of the United States precedents regarding § 1332's amount-in-controversy requirement, while Part IV analyzes the statute's

3. 28 U.S.C. § 1331 (2012).

4. *Id.* § 1332. Title 28, Section 1367 of United States Code provides that the federal courts, in some circumstances, may also exercise supplemental jurisdiction over claims that are part of the same case or controversy as claims over which the courts have primary subject matter jurisdiction. *Id.* § 1367; *see also, e.g.*, Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 559 (2005) ("Once the court determines it has original jurisdiction over the civil action, it can turn to the question whether it has a constitutional and statutory basis for exercising supplemental jurisdiction over the other claims in the action.").

5. 28 U.S.C. § 1331. For example, federal courts have subject matter jurisdiction pursuant to federal statutes such as 28 U.S.C. § 1334—bankruptcy proceedings, 28 U.S.C. § 1335—interpleader, 28 U.S.C. § 1337—commerce and antitrust regulations, 28 U.S.C. § 1338—patents, copyrights, and trademarks, 28 U.S.C. § 1340—internal revenue and customs duties, and 28 U.S.C. § 1343—civil rights and elective franchise. *Id.* §§ 1334, 1335, 1337, 1338, 1340, 1343.

6. *Id.* § 1332.

7. *Id.*; §§ 1332, 1441(a)–(h).

8. *Id.* § 1332(a).

9. 28 U.S.C. § 1332(a)–(d)(4).

10. *See id.* § 1332(a)–(d)(4); *infra* Parts II–VI.

11. *See infra* Parts II–VI.

12. *See infra* Parts II.

requirements for diversity of citizenship.[13] Section 1332's specific requirements for diversity jurisdiction in the context of class actions are set forth in Part V.[14] Finally, Part VI presents some specific legal rules that come up in appellate litigation of diversity issues.[15]

II. STATUTORY FOUNDATIONS OF DIVERSITY JURISDICTION AND GENERAL RULES OF APPLICATION

The starting point for federal courts' diversity jurisdiction is § 1332.[16] In subsection (a), that statute provides the basic requirements for diversity jurisdiction:

> The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000,[17] exclusive of interest and costs, and is between—
>
> (1) citizens of different [s]tates;
>
> (2) citizens of a [s]tate and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a [s]tate and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same [s]tate;
>
> (3) citizens of different [s]tates and in which citizens or subjects of a foreign state are additional parties; and
>
> (4) a foreign state, defined in [§] 1603(a) of this title, as plaintiff and citizens of a [s]tate or of different [s]tates.[18]

Subsection (d) sets out specific diversity jurisdiction requirements for class action lawsuits, which are different from those in other diversity cases.[19]

More generally, Rule 8 of the Federal Rules of Civil Procedure ("FRCP"), provides the following requirement for pleading jurisdiction in

13. *See infra* Parts III–IV.
14. *See infra* Parts V.
15. *See infra* Parts VI.
16. 28 U.S.C. § 1332 (2012).
17. *Id.* The amount in the amount-in-controversy requirement has increased numerous times since the nineteenth century, and has been set at more than $75,000 since 1996. *See id.* § 1332(a).
18. *Id.* § 1332(a)(1)–(4).
19. *See id.* § 1332(d).

cases filed originally in federal court: "A pleading that states a claim for relief must contain . . . *a short and plain statement of the grounds for the court's jurisdiction*, unless the court already has jurisdiction and the claim needs no new jurisdictional support."[20] Applying this rule, when a plaintiff files suit in federal court based on diversity, he or she must allege facts that demonstrate that the court has jurisdiction under 28 U.S.C. § 1332.[21] If a plaintiff's inadequate jurisdictional allegations remain uncured, the district court is required to dismiss the case without addressing its merits.[22] Dismissal is required because "once a federal court determines that it is without subject matter jurisdiction, the court is powerless to continue."[23]

Sometimes a diversity case is in federal court because a defendant has petitioned for its removal from state court.[24] The statutory basis for removal of a civil action from a state court to a federal court is found in 28 U.S.C. § 1441:

> Except as otherwise expressly provided by Act of Congress, any civil action brought in a [s]tate court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.[25]

The burden is on the defendant to adequately plead diversity in a removal case.[26] A defendant seeking to remove an action from state to federal court must file a notice of removal in the district court that "contain[s] a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders" served upon the defendant in the state court action.[27] If the defendant fails to demonstrate that the § 1332 diversity requirements have been met in a removed case, the district court will remand the case back to the state court.[28]

---

20. FED. R. CIV. P. 8(a)(1) (emphasis added).

21. 28 U.S.C. § 1332; FED. R. CIV. P. 8(a)(1); Travaglio v. Am. Express Co., 735 F.3d 1266, 1268 (11th Cir. 2013).

22. *Travaglio*, 735 F.3d at 1268–69; *see also* Goodman v. Sipos, 259 F.3d 1327, 1331 n.6 (11th Cir. 2001).

23. Univ. of S. Ala. v. Am. Tobacco Co., 168 F.3d 405, 410 (11th Cir. 1999).

24. Triggs v. John Crump Toyota, Inc., 154 F.3d 1284, 1287 (11th Cir. 1998).

25. 28 U.S.C. § 1441(a); *Triggs*, 154 F.3d at 1287 ("A civil case filed in state court may be removed by the defendant to federal court if the case could have been brought originally in federal court.").

26. *See* 28 U.S.C. § 1446(a).

27. *Id.*

28. *See id.* § 1332; *Univ. of S. Ala.*, 168 F.3d at 410.

Even if the parties do not dispute a court's subject matter jurisdiction based upon diversity, federal courts are "obligated to inquire into subject matter jurisdiction sua sponte whenever it may be lacking."[29] The parties may not agree to waive subject matter jurisdiction.[30] As a result, the following legal issues may come up either by way of arguments raised by one or more of the parties, or because the federal court identifies a potential problem with diversity jurisdiction.[31]

III. DETERMINING THE AMOUNT IN CONTROVERSY

In civil actions—aside from class actions—there are two basic requirements for diversity jurisdiction: (1) the amount in controversy must be more than $75,000; and (2) the parties must be completely diverse.[32] This first section focuses on how the Eleventh Circuit applies the amount-in-controversy requirement.[33]

A. *Burden of Demonstrating that Amount in Controversy Has Been Met*

As stated above, the diversity statute requires that "the matter in controversy exceed[] the sum or value of $75,000, exclusive of interest and costs."[34] The party responsible for bringing the case to the federal courts bears the burden of demonstrating that the diversity requirements have been met.[35] In a case originating in the federal district court, the plaintiff must allege *in good faith* a sum adequate to meet the statutory requirements.[36]

---

29. *Univ. of S. Ala.*, 168 F.3d at 410.

30. *Id.*; *see also* Jackson v. Seaboard Coast Line R.R., 678 F.2d 992, 1000 (11th Cir. 1982).

> The jurisdiction of a court over the subject matter of a claim involves the court's competency to consider a given type of case, and cannot be waived or otherwise conferred upon the court by the parties. Otherwise a party could work a wrongful extension of federal jurisdiction and give district courts power the Congress denied them.

Jackson, 678 F.2d at 1000 (citations omitted) (internal quotation marks omitted); United States v. Cotton, 535 U.S. 625, 630 (2002) (holding that "subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived").

31. *See infra* Parts III–IV.

32. 28 U.S.C. § 1332(a)(1)–(4).

33. *See infra* Part III.A–F.

34. 28 U.S.C. § 1332(a).

35. Univ. of S. Ala. v. Am. Tobacco Co., 168 F.3d 405, 411–12 (11th Cir. 1999).

36. Federated Mut. Ins. Co. v. McKinnon Motors, L.L.C., 329 F.3d 805, 807 (11th Cir. 2003); *see also* St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288

In contrast, in cases removed from state court to federal court, the defendant bears the burden of proving diversity.[37] The defendant must "show, by a preponderance of the evidence, facts supporting jurisdiction."[38] Applying this standard in removal cases, the federal court will show deference to the plaintiff's damages allegations when pleaded specifically.[39] However, when the plaintiff has not alleged a specific amount of damages, the court will apply the preponderance of the evidence standard.[40]

B. *"Legal Certainty" Requirement for Dismissal Based on Failure to Meet Amount in Controversy Requirement*

Federal courts "will not dismiss a case for lack of subject matter jurisdiction under the diversity statute 'unless it appears to a '*legal certainty*' that plaintiff's claim is actually for less than the jurisdictional amount.'"[41] The Eleventh Circuit has explained that this standard "give[s] great weight to plaintiff's assessment of the value of plaintiff's case."[42] It is an objective standard.[43]

In contrast, the court will not allow defendants seeking to remove cases from state to federal court to benefit from the *legal certainty* test.[44] Thus, where the plaintiff seeks less than the amount required for diversity jurisdiction, "only the sum *actually demanded* is in controversy."[45] In order to avoid remand in removal cases involving alleged damages below the statutory amount-in-controversy minimum, the defendant "must prove to a legal certainty" that the plaintiff's counsel has either falsely or incompetently assessed the case.[46] The Eleventh Circuit has stated that one way that a

---

(1938) (stating that "the sum claimed by the plaintiff controls if the claim is apparently made in good faith").

37. Williams v. Best Buy Co., 269 F.3d 1316, 1319 (11th Cir. 2001).

38. Burns v. Windsor Ins. Co., 31 F.3d 1092, 1094 (11th Cir. 1994); *see also Williams*, 269 F.3d at 1319.

39. *See Burns*, 31 F.3d at 1095 (stating that "plaintiff's claim, when it is specific and in a pleading signed by a lawyer, deserves deference and a presumption of truth").

40. *See* Sierminski v. Transouth Fin. Corp., 216 F.3d 945, 947–48 (11th Cir. 2000).

41. Broughton v. Fla. Int'l Underwriters, Inc., 139 F.3d 861, 863 (11th Cir. 1998) (quoting *Burns*, 31 F.3d at 1094) (emphasis added); *see also St. Paul Mercury Indem. Co.*, 303 U.S. at 289 ("It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal.").

42. *Burns*, 31 F.3d at 1094.

43. *Id.* at 1096.

44. *See id.* at 1094–95 (noting that the plaintiff "is the master of his own claim.").

45. *See id.* at 1095 (emphasis added).

46. *Id.*

removing defendant could remain in federal court in this circumstance was if "he showed that, if plaintiff prevails on liability, an award below the jurisdictional amount would be outside the range of permissible awards."[47]

C. *Timing of Amount in Controversy Determination for Removal Cases*

Jurisdictional facts—including those regarding the amount in controversy—must be determined as of the date of removal.[48] However, the court is not limited to jurisdictional allegations in the removal petition; it may also consider post-removal evidence of the amount in controversy, such as that presented in affidavits, if that evidence is relevant to the time of removal.[49]

D. *Calculating Amount in Controversy*

1. Law Regarding Aggregating Claims to Meet Amount in Controversy Requirements

The law regarding aggregation of claims to meet amount in controversy requirements is complex and not always consistent.[50] This subsection sets out some of the rules regarding aggregation of claims.[51]

a. *Aggregation of Multiple Claims by Plaintiff(s) Against a Single Defendant*

As a general rule, a plaintiff may aggregate multiple claims against a single defendant in order to meet the amount in controversy requirements for diversity jurisdiction.[52] In contrast, the Supreme Court of the United States has held that multiple plaintiffs' claims can be aggregated, for purposes of diversity jurisdiction, only when "plaintiffs [have] unite[d] to enforce a single title or right in which they have a common and undivided interest."[53] Thus,

47. *Burns*, 31 F.3d at 1096.

48. Sierminski v. Transouth Fin. Corp., 216 F.3d 945, 949 (11th Cir. 2000).

49. *Id.*; *see also* Williams v. Best Buy Co., 269 F.3d 1316, 1319 (11th Cir. 2001) (stating that "a district court may properly consider post-removal evidence in determining whether the jurisdictional amount was satisfied at the time of removal").

50. 14AA CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3704 (4th ed. 2011).

51. *See infra* Part III.D(1)(a–c).

52. Pearson v. Nat'l Soc'y of Pub. Accountants, 200 F.2d 897, 898 (5th Cir. 1953).

53. Snyder v. Harris, 394 U.S. 332, 335 (1969); *see also* Zahn v. Int'l Paper Co., 414 U.S. 291, 294 (1973).

when multiple plaintiffs have separate and distinct claims, the court will not aggregate those claims to meet the minimum amount in controversy.[54]

b. *Aggregating Claims Against Multiple Defendants*

When a plaintiff brings separate and distinct claims against multiple defendants, the general rule is that claims cannot be aggregated to meet the amount in controversy requirement.[55] The outcome is different when a plaintiff brings claims against two or more defendants who are jointly liable to the plaintiff; in that situation, the claims may be aggregated.[56] Applying this rule, the Fifth Circuit held that a plaintiff could not aggregate claims against two insurance companies when one company had primary liability and the other one had excess coverage of the same insured risk.[57]

c. *Aggregation in the Context of Class Actions*

There are additional specific aggregation rules in the context of class actions.[58] For a complete discussion of those rules, see Part V.[59]

2. Methods of Determining Amount in Controversy in Removal Cases

The Eleventh Circuit has set out a specific approach to determining amount in controversy in removal cases.[60] When the state court complaint seeks more than $75,000 in damages, "a removing defendant may rely on the plaintiff's valuation of the case to establish the amount in controversy unless it appears to a legal certainty that the plaintiff cannot recover the amount claimed."[61] However, if the complaint does not contain a claim for a specific amount of damages, the federal court should consider whether "it is facially

54. *E.g.*, Niagara Fire Ins. Co. v. Dyess Furniture Co., 292 F.2d 232, 233 (5th Cir. 1961) ("The law has been . . . long settled . . . that when two or more plaintiffs, having separate and distinct demands, unite in a single suit for convenience of litigation, their claims cannot be aggregated to make up the jurisdictional amount.").

55. Jewell v. Grain Dealers Mut. Ins. Co., 290 F.2d 11, 13 (5th Cir. 1961); *see also* Cornell v. Mabe, 206 F.2d 514, 516 (5th Cir. 1953).

56. *Jewell*, 290 F.2d at 13; *Cornell*, 206 F.2d at 516–17 ("However, when the action is to recover a single tract of land and the several defendants claim under a common source of title, the matter in controversy is the entire tract of land and not its several parts.").

57. *Jewell*, 290 F.2d at 13.

58. *See* 28 U.S.C. § 1332(d) (2012).

59. *See infra* Part V.

60. Williams v. Best Buy Co., 269 F.3d 1316, 1319 (11th Cir. 2001).

61. Mitchell v. Brown & Williamson Tobacco Corp., 294 F.3d 1309, 1315 (11th Cir. 2002).

apparent from the complaint that the amount in controversy exceeds the jurisdictional requirement."[62]

In evaluating whether the amount in controversy is facially apparent from the complaint, "the district court is not bound by the plaintiff's representations regarding its claim, nor must it assume that the plaintiff is in the best position to evaluate the amount of damages sought."[63] Indeed, the court may decide that the defendant's evidence regarding the amount in controversy is more reliable than that of the plaintiff.[64] The district court "may use [its] judicial experience and common sense in determining whether the case stated in a complaint meets federal jurisdictional requirements."[65]

"If the jurisdictional amount is not facially apparent from the complaint, the court should look to the notice of removal and may require evidence relevant to the amount in controversy at the time the case was removed."[66] In order to sufficiently allege jurisdiction in the petition for removal, the defendant must do more than make "[a] conclusory allegation . . . that the . . . amount is satisfied, without setting forth the underlying facts supporting such an assertion."[67]

3. Determining Amount in Controversy in Cases Involving Only Declaratory and Injunctive Relief

In cases where the plaintiff seeks only declaratory and injunctive relief, the proper measure of amount in controversy is the value of the object of the litigation.[68] The Eleventh Circuit has determined that this value should

62. *Williams*, 269 F.3d at 1319; *see also* Roe v. Michelin N. Am., Inc., 613 F.3d 1058, 1061 (11th Cir. 2010).

63. *Roe*, 613 F.3d at 1061.

64. *Id.* at 1061.

65. *Id.* at 1062.

> Thus, when a district court can determine, relying on its judicial experience and common sense, that a claim satisfies the amount in controversy requirements, it need not give credence to a plaintiff's representation that the value of the claim is indeterminate. Otherwise, a defendant could wrongly be denied the removal to which it is entitled.

Id at 1064.

66. *Williams*, 269 F.3d at 1319.

67. *Id.* at 1319–20; *see also* Leonard v. Enter. Rent A Car, 279 F.3d 967, 972 (11th Cir. 2002) ("The defendants in this case have failed to carry their burden; all they did was to fill the notice of removal with the type of unsupported assumptions we have held to be inadequate.").

68. Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 347 (1977); *see also* Ericsson GE Mobile Commc'ns, Inc. v. Motorola Commc'ns & Elecs., Inc., 120 F.3d 216, 218 (11th Cir. 1997).

be determined from the plaintiff's perspective.[69] If the value of the requested relief is too speculative or immeasurable, the Eleventh Circuit has held that the plaintiff fails to meet the amount in controversy requirements for diversity jurisdiction under 28 U.S.C. § 1332.[70]

4. Determining Amount in Controversy for Specific Performance Cases

In diversity cases in which the plaintiff seeks specific performance of a contract, federal courts generally base their calculation of the amount in controversy on the value of the property at issue, not the amount that might be awarded in damages for breach of contract.[71]

5. Challenges to Arbitration Awards and the Amount in Controversy Requirement

The Federal Arbitration Act does not provide subject matter jurisdiction for a case to be in federal courts.[72] Instead, a party seeking to challenge an arbitration award must demonstrate an independent basis for jurisdiction, such as diversity.[73] In *Peebles v. Merrill Lynch, Pierce, Fenner & Smith Inc.*,[74] the Eleventh Circuit held that "a federal court has subject matter jurisdiction where a party seeking to vacate an arbitration award is also seeking a new arbitration hearing at which he will demand a sum which exceeds the amount in controversy for diversity jurisdiction purposes."[75]

---

69. *Ericcson GE Mobile Commc'ns, Inc.*, 120 F.3d at 218–20; *see also* Davis v. Carl Cannon Chevrolet-Olds, Inc., 182 F.3d 792, 796 (11th Cir. 1999). Note: Not all circuits follow the plaintiff's-viewpoint rule, although the majority have. *Ericsson GE Mobile Commc'ns, Inc.*, 120 F.3d at 218 n.8.

70. 28 U.S.C. § 1332(a) (2012); *Ericsson GE Mobile Commc'ns, Inc.*, 120 F.3d at 222 ("Because [the plaintiff] cannot reduce the speculative benefit resulting from a rebid to a monetary standard, . . . there is no pecuniary amount in controversy."); *see also* Morrison v. Allstate Indem. Co., 228 F.3d 1255, 1269 (11th Cir. 2000) (stating that "a plaintiff who bases diversity jurisdiction on the value of injunctive relief must show that the benefit to be obtained from the injunction is sufficiently measurable and certain to satisfy the . . . amount in controversy requirement") (quotation omitted).

71. Occidental Chem. Corp. v. Bullard, 995 F.2d 1046, 1047 (11th Cir. 1993) (per curiam). "When the value of property sought to be obtained by specific performance exceeds the sum which might have been awarded in damages, the amount in controversy is established by the value of the property." *Id.*

72. Peebles v. Merrill Lynch, Pierce, Fenner & Smith, Inc. 431 F.3d 1320, 1325 (11th Cir. 2005); *see also* 9 U.S.C. §§ 1–16 (2012).

73. *See Peebles*, 431 F.3d at 1325.

74. 431 F.3d 1320 (11th Cir. 2005).

75. *Id.* at 1325.

E. *Effect of Subsequent Events*

Subsequent events do not change a federal court's analysis of the amount in controversy, as the court's jurisdiction is determined as of the date that the case enters the district court.[76] As the Supreme Court of the United States noted in *St. Paul Mercury Indemnity Co. v. Red Cab Co.*,[77] the fact that the plaintiff does not ultimately recover the full amount alleged in the complaint does not void the federal court's jurisdiction in a diversity case.[78] In explaining the good-faith requirement, the Supreme Court explained, "[t]he inability of plaintiff to recover an amount adequate to give the court jurisdiction does not show his bad faith or oust the jurisdiction."[79]

Applying this rule, a plaintiff's stipulation or amendment of the pleadings after a case is removed to federal court that reduces the amount in controversy below the statutory minimum does not divest the federal court of diversity jurisdiction.[80] Moreover,

> the fact that it appears from the face of the complaint that the defendant has a valid defense, if asserted, to all or a portion of the claim, or the circumstance that the rulings of the district court after removal reduce the amount recoverable below the jurisdictional requirement, will not justify remand.[81]

Thus, the Eleventh Circuit has held that, in determining the amount in controversy, it will not consider whether some damages may be precluded by the statute of limitations.[82]

---

76. St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 289–90, 293 (1938).

77. 303 U.S. 283 (1938).

78. *Id.* at 289.

79. *Id.*; *see also* Adolph Coors Co. v. Movement Against Racism & the Klan, 777 F.2d 1538, 1544 (11th Cir. 1985) (stating that, once the amount in controversy requirement is met "and the federal court is seized of jurisdiction, the court's power is not conditional on a later award of at least that amount").

80. *St. Paul Mercury Indem. Co.*, 303 U.S. at 292.

81. *Id.*

82. McGee v. Sentinel Offender Servs., L.L.C., 719 F.3d 1236, 1241 (11th Cir. 2013) (per curiam); Miedema v. Maytag Corp., 450 F.3d 1322, 1332 n.9 (11th Cir. 2006).

> The district court also found it significant that Maytag's calculation of the amount in controversy did not account for the effect of any applicable statutes of limitations. When determining the amount in controversy for jurisdictional purposes, however, courts cannot look past the complaint to the merits of a defense that has not yet been established.

Miedema, 450 F.3d at 1332 n.9.

F. *Relevance of State Law to Determination of Amount in Controversy*

Although the question of whether the plaintiff has met the amount in controversy requirement for diversity jurisdiction is a federal question, courts will often consider whether state law is relevant to that determination.[83] Specifically, the court will utilize state law "insofar as it defines the nature and extent of the right plaintiff seeks to enforce."[84]

In *Broughton v. Florida International Underwriters, Inc.*,[85] the Eleventh Circuit considered whether a plaintiff could rely upon claims for statutory penalties and attorney's fees, brought pursuant to a Georgia statute, to meet the minimum amount in controversy requirement for diversity jurisdiction.[86] Although the court was willing to consider these types of claims, it ultimately determined that the defendant was not liable under the state statute and, therefore, the plaintiff did not meet the minimum amount-in-controversy requirement.[87] In *Ericsson GE Mobile Communications, Inc. v. Motorola Communications & Electronics, Inc.*,[88] the court also considered the availability of state-law remedies—this time under Alabama law—in determining whether the amount in controversy requirement was met.[89]

IV. DETERMINING DIVERSITY OF CITIZENSHIP

The following Part addresses in more detail the Eleventh Circuit's analysis of § 1332's requirement that parties seeking the federal court's diversity jurisdiction demonstrate diversity of citizenship.[90] In fact, most of the court's analysis regarding jurisdiction under this statute has focused primarily on this specific requirement, as explained further.[91]

---

83. *See* Broughton v. Fla. Int'l Underwriters, Inc., 139 F.3d 861, 863 (11th Cir. 1998); Horton v. Liberty Mut. Ins. Co., 367 U.S. 348, 352–53 (1961).

> [D]etermination of the value of the matter in controversy for purposes of federal jurisdiction is a federal question to be decided under federal standards, although the federal courts must, of course, look to state law to determine the nature and extent of the right to be enforced in a diversity case.

Horton, 367 U.S. at 352–53.

84. *Broughton*, 139 F.3d at 863 (quoting Duderwicz v. Sweetwater Sav. Ass'n, 595 F.2d 1008, 1012 (5th Cir. 1979)).

85. 139 F.3d 861 (11th Cir. 1998).

86. *Id.* at 863–64.

87. *Id.* at 864.

88. 120 F.3d 216 (11th Cir. 1997).

89. *Id.* at 220–21 (holding that under Alabama law, if the plaintiff was successful it would only be entitled to rebid the contract and that the value of that benefit was too speculative to meet the amount-in-controversy requirement for diversity jurisdiction.).

90. *See infra* Part IV.A-B.

91. *See infra* Part IV.A.

A. *Rules Related to Pleading Diversity of Citizenship Exists*

1. The Rule for Cases Filed Originally in District Court

a. *Requirements Under FRCP 8*

When a party seeks to bring an original civil action in the federal court, pursuant to 28 U.S.C. § 1332(a), FRCP 8 applies.[92] Under FRCP 8, the plaintiff's complaint must provide a short and plain statement of the court's jurisdiction.[93] Applying FRCP 8 in the context of § 1332, in order to adequately allege diversity jurisdiction, a plaintiff must provide specific allegations regarding the amount in controversy and diversity of citizenship.[94] Although the rule is straightforward, numerous legal issues can complicate the federal court's analysis of the parties' citizenship, as illustrated below.[95]

b. *Timing: Diversity Jurisdiction Is Determined as of Date that the Action Was Filed*

In determining whether the district court has subject matter jurisdiction, the Eleventh Circuit looks to the facts as they existed at the time the action was filed.[96]

i. Post-filing Changes in Citizenship Do Not Matter for Purposes of Diversity Jurisdiction

It is well established that the only citizenship that matters for purposes of determining whether diversity jurisdiction exists is the original parties' citizenship at the time the lawsuit is filed; any changes in a party's citizenship that occur after filing are irrelevant.[97] Thus, the district court will not "lose jurisdiction over a diversity [claim that] was well founded at the outset even [if] one of the parties . . . later change[s] [its] domicile."[98] Moreover, post-filing changes in the citizenship of a party cannot cure jurisdictional defects in a diversity action, where "[t]he purported cure arose not from a

92. *See* 28 U.S.C. § 1332(a) (2012); FED. R. CIV. P. 8(a).
93. FED. R. CIV. P. 8(a)(1).
94. 28 U.S.C. § 1332(a)(1)–(4); FED. R. CIV. P. 8(a)(1).
95. *See infra* Part IV.A.1.b.
96. *See* Freeport-McMoRan Inc. v. K N Energy, Inc., 498 U.S. 426, 428 (1991) (per curiam); Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 830 (1989).
97. *Freeport-McMoRan Inc.*, 498 U.S. at 428; Wichita R.R. & Light Co. v. Pub. Utils. Comm'n of Kan., 260 U.S. 48, 54 (1922) ("Jurisdiction once acquired on that ground is not divested by a subsequent change in the citizenship of the parties.").
98. Rosado v. Wyman, 397 U.S. 397, 405 n.6 (1970),

change in parties to the action, but from a change in the citizenship of a continuing party."[99]

ii. The Substitution of Parties Under FRCP 25(c) Does Not Defeat Diversity Jurisdiction

Diversity jurisdiction was not defeated by the addition of a nondiverse party to the action—accomplished by substituting the nondiverse party as a plaintiff under FRCP 25(c)—when the plaintiffs and defendant were diverse at the time that the action arose and at the time that federal proceedings were commenced; the substituted party "was not an *indispensable* party at the time the complaint was filed"; and the substituted party "had no interest whatsoever in the outcome of the litigation until sometime after [the] suit was commenced."[100]

iii. Permissive Intervention of a Party Under FRCP 24 Does Not Destroy Diversity Jurisdiction

FRCP 24 provides for intervention of right and permissive intervention by other parties.[101] The intervention of a party, by leave of court, does not destroy the federal court's diversity jurisdiction when the intervening party's "presence is not essential to a decision of the controversy between the original parties."[102]

Recent Eleventh Circuit case law suggests that an intervenor's citizenship does have an effect on a court's diversity jurisdiction analysis in some circumstances, however.[103] In *Flintlock Construction Services, L.L.C. v. Well-Come Holdings, L.L.C*[104] a case brought pursuant to diversity jurisdiction, the intervenor was a citizen of the same state as the plaintiff and sought to bring claims against both the plaintiff and the defendants.[105] In order to maintain diversity jurisdiction, the court dismissed the intervenor's

99. Grupo Dataflux v. Atlas Global Grp., L.P., 541 U.S. 567, 574–75 (2004).

100. *Freeport McMoRan Inc.*, 498 U.S. at 426–29 (noting that "[a] contrary rule could well have the effect of deterring normal business transactions during the pendency of what might be lengthy litigation"); *see also* FED. R. CIV. P. 25(c); Hardenbergh v. Ray, 151 U.S. 112, 118–19 (1894) (holding that the substitution of nondiverse defendants for diverse defendants did not destroy federal jurisdiction).

101. FED. R. CIV. P. 24(a)–(b). FRCP 24(a) provides for intervention of right, while FRCP 24(b) applies to permissive interventions. *Id.*

102. *Wichita R.R. & Light Co.*, 260 U.S. at 54.

103. *See* Flintlock Constr. Servs., L.L.C. v. Well-Come Holdings, L.L.C., 710 F.3d 1221, 1224 (11th Cir. 2013).

104. 710 F.3d 1221 (11th Cir. 2013).

105. *Id.* at 1222-23.

claims against the plaintiff but allowed the claims against the defendant to proceed.[106]

iv. Plaintiff Cannot Later Amend Complaint to Add Nondiverse Defendant

Although the Supreme Court has recognized that diversity jurisdiction is not destroyed by a federal court's exercise of ancillary jurisdiction over nonfederal claims involving impleader, cross-claims, or counter-claims, a court will not have diversity jurisdiction where a plaintiff later amends the complaint to add a nondiverse party.[107]

v. In Evaluating Diversity, the Court Should Realign Parties According to Their Real Interests

The plaintiff's alignment of the parties is not determinative for diversity purposes.[108] Thus, a federal district court, in determining whether there is complete diversity, has a duty to realign parties according to their real interests.[109] For example, in shareholder derivative suits brought in federal court pursuant to diversity jurisdiction, the court will align the corporation as a defendant whenever the corporate management has adopted a position that is antagonistic to that of the plaintiff shareholder.[110]

c. *Curing Defects in Diversity Jurisdiction*

Under certain circumstances, it is possible to cure defects in diversity jurisdiction.[111] The following subsection provides some analysis of when curing is possible and how it may be accomplished.[112]

i. Courts May Use FRCP 21 to Drop Nondiverse Dispensable Parties

"On motion or on its own, the court may at any time, on just terms, add or drop a party."[113] Thus, although generally diversity jurisdiction is

106. *Id.* at 1225.
107. *See* Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 375-77 (1978).
108. Indianapolis v. Chase Nat'l Bank, 314 U.S. 63, 69 (1941).
109. *Id.*; *see also* City of Vestavia Hills v. General Fid. Ins. Co., 676 F.3d 1310, 1313 (11th Cir. 2012) (noting that "federal courts are required to realign the parties in an action to reflect their interests in the litigation").
110. *See* Smith v. Sperling, 354 U.S. 91, 96–98 (1957).
111. *See* FED. R. CIV. P. 21; *infra* Part IV.A.1.C.
112. *See infra* Part IV.A.1.C.

determined at the time of filing, a jurisdictional defect relating to diversity of citizenship can be cured by the dismissal of a nondiverse dispensable party who destroyed diversity.[114] The Supreme Court of the United States has warned that federal courts should exercise this power sparingly.[115] In determining whether to dismiss a nondiverse party, the court "should carefully consider whether the dismissal of a nondiverse party will prejudice any of the parties in the litigation."[116]

Dismissal of nondiverse parties is not possible in all circumstances.[117] If the nondiverse party is indispensable, the court must dismiss the entire case for lack of subject matter jurisdiction.[118]

ii. Under Some Circumstances, Parties Can Cure Defective Allegations of Jurisdiction

Parties may amend defective allegations of jurisdiction pursuant to 28 U.S.C. § 1653.[119] Title 28, Section 1653 of the United States Code provides that "[d]efective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts."[120] The statute applies only to *allegations* of jurisdiction, however, and not to the underlying *jurisdictional facts*.[121] Moreover, a defendant's admissions as to his domicile—as well as record evidence regarding domicile—are sufficient to cure a plaintiff's pleading defect when the complaint only pleaded the defendant's residency.[122]

Parties may also cure deficiencies in diversity jurisdiction allegations by submitting evidence of citizenship during case proceedings.[123] The

113. FED. R. CIV. P. 21; *see also* Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 832 (1989) ("[I]t is well settled that Rule 21 invests district courts with authority to allow a dispensable nondiverse party to be dropped at any time, even after judgment has been rendered.").

114. Grupo Dataflux v. Atlas Global Grp., L.P., 541 U.S. 567, 572–73 (2004); *see also Newman-Green, Inc.*, 490 U.S. at 827, 837–38; Molinos Valle Del Cibao, C. por A. v. Lama, 633 F.3d 1330, 1343 (11th Cir. 2011).

115. *Newman-Green, Inc.*, 490 U.S. at 837–38.

116. *Id.* at 838.

117. *See id.* at 837–38.

118. *Molinos Valle Del Cibao, C. por A.*, 633 F.3d at 1343.

119. 28 U.S.C. § 1653 (2012).

120. *Id.*; *see also* Morales v. Zenith Ins. Co., 714 F.3d 1220, 1226 n.12 (11th Cir. 2013) (allowing parties to submit supplemental materials to demonstrate diversity of citizenship in case removed from state court).

121. Newman-Green, Inc., 490 U.S. at 831 (stating that 28 U.S.C. § 1653 "addresses only incorrect statements about jurisdiction that actually exists, and not defects in the jurisdictional facts themselves").

122. *See Molinos Valle Del Cibao, C. por A.*, 633 F.3d at 1342–43.

123. *See id.*

Supreme Court of the United States has held that a federal court may consider record evidence in determining whether diversity jurisdiction exists.[124] Applying that rule, the appellate court "need not vacate a decision on the merits if the evidence submitted during the course of the proceedings cures any jurisdictional pleading deficiency by convincing [the court] of the parties' citizenship."[125]

iii. Limitations on a Party's Attempts to Cure Jurisdictional Allegations

Although it is possible for the plaintiff to cure the jurisdictional allegations in the complaint, a federal court will not accept the parties' stipulation that diversity jurisdiction exists.[126] Furthermore, although a party may cure insufficient allegations of diversity jurisdiction by amending pleadings, a party may not cure them solely through self-serving statements in an unsworn brief.[127]

2. Case Removed from State Court to Federal District Court

As explained above, a defendant may also remove a case from state court pursuant to 28 U.S.C. § 1441, as long as he demonstrates that the federal court has subject matter jurisdiction over the case.[128] As the Eleventh Circuit explained in *Triggs v. John Crump Toyota, Inc.*,[129] "[a] civil case filed in state court may be removed by the defendant to federal court if the case could have been brought originally in federal court."[130] Similar to the diversity rules for cases filed originally in the district court, the Eleventh Circuit has developed a series of legal rules for analysis of the federal court's diversity jurisdiction in removal cases, as discussed further.[131]

---

124. *See* Sun Printing & Publ'g Ass'n v. Edwards, 194 U.S. 377, 382 (1904) (stating "[t]he whole record . . . may be looked to, for the purpose of curing a defective averment of citizenship, where jurisdiction in a Federal court is asserted to depend upon diversity of citizenship").

125. Travaglio v. Am. Express Co., 735 F.3d 1266, 1269 (11th Cir. 2013).

126. *See id.* at 1269–70 (stating "it is fundamental that parties may not stipulate to federal jurisdiction").

127. *See id.* at 1269 (noting that "we have never held that an unsworn statement in a brief, alone, can demonstrate a party's citizenship for purposes of establishing diversity jurisdiction").

128. 28 U.S.C. § 1441(a) (2012); *see also* Triggs v. John Crump Toyota, Inc., 154 F.3d 1284, 1287 (11th Cir. 1998).

129. 154 F.3d 1284 (11th Cir. 1998).

130. *Id.* at 1287.

131. *See infra* Part V.B.

a. *Burden to Adequately Plead Diversity Is on the Defendant in a Removal Case*

Although the pleading requirements are somewhat similar in removal cases to those originating in federal court, the pleading requirements for removed cases are found in 28 U.S.C. § 1446(a), rather than FRCP 8(a)(1).[132] As explained further, the defendant, not the plaintiff, bears the burden of pleading diversity in a case removed from state court.[133] As part of that requirement, the defendant's notice of removal must include "a short and plain statement of the grounds for removal."[134]

b. *Specific Statutory Rules for Removal of Diversity Cases*

Title 28, Section 1441 of the United States Code contains additional special rules for diversity cases in the context of removal cases, as described below.[135]

i. Fictitious Names ("Jane Does") Are Disregarded for Purposes of Determining Jurisdiction in Removal Cases

Title 28, Section 1441(b)(1) of the United States Code instructs that, "[i]n determining whether a civil action is removable on the basis of the jurisdiction under [§] 1332(a) . . . the citizenship of defendants sued under fictitious names shall be disregarded."[136]

ii. Exception When Defendant Is Citizen of State in Which Action Was Brought

Under 28 U.S.C. § 1441(b)(2), "[a] civil action otherwise removable solely on the basis of the jurisdiction under [§] 1332(a) . . . may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought."[137]

---

132. *Compare* 28 U.S.C. § 1446(a) *with* FED. R. CIV. P. 8(a)(1).

133. *See* 28 U.S.C. § 1446(a); Leonard v. Enter. Rent A Car, 279 F.3d 967, 972 (11th Cir. 2002); *supra* Part III.A.

134. 28 U.S.C. § 1446(a).

135. *See infra* Part IV.A.2.c.

136. 28 U.S.C. § 1441(b)(1); *see also* Walker v. CSX Transp., Inc., 650 F.3d 1392, 1395 n.11 (11th Cir. 2011).

137. 28 U.S.C. § 1441(b)(2); *see also* Lincoln Prop. Co. v. Roche, 546 U.S. 81, 90 (2005); Caterpillar Inc. v. Lewis, 519 U.S. 61, 68 (1996).

When a plaintiff files in state court a civil action over which the federal district courts would have original jurisdiction based on diversity of citizenship, the defendant or

c. *Time For Determining Whether Diversity Exists for Purposes of Removal*

Pursuant to 28 U.S.C. § 1446(b), "[i]n a case not originally removable, a defendant who receives a pleading or other paper indicating the post-commencement satisfaction of federal jurisdictional requirements—for example, by reason of the dismissal of a nondiverse party—may remove the case to federal court within [thirty] days of receiving such information."[138]

The timing of a determination of diversity for purposes of removal is approached somewhat differently than it is in cases originating in federal court.[139] In cases removed from state to federal court, the district court must look at the case at the time of removal, rather than the time of filing of the original complaint, to determine whether it has subject-matter jurisdiction.[140] Generally, the right of removal is decided by the pleadings, viewed at the time when removal is filed.[141]

d. *Curing Faulty Citizenship Allegations in Removal Petitions*

Faulty allegations of citizenship in a removal petition may be properly cured by filing an amended petition for removal in the federal district court.[142] Moreover, "a district court's error in failing to remand a case improperly removed is not fatal to the ensuing adjudication if federal jurisdictional requirements are met at the time final judgment is entered."[143] The Supreme Court has contrasted situations in which a jurisdictional defect remained uncured and situations in which there was no jurisdictional defect at the time that the district court entered judgment.[144]

> defendants may remove the action to federal court . . . provided that no defendant "is a citizen of the State in which such action is brought."

Caterpillar, Inc., 519 U.S. at 68 (citation omitted).

138. 28 U.S.C. § 1446(b); *Caterpillar Inc.*, 519 U.S. at 68–69.

139. *Compare* Leonard v. Enter. Rent A Car, 279 F.3d 967, 972 (11th Cir. 2002), *with* Gibson v. Bruce, 108 U.S. 561, 563 (1883).

140. Pintando v. Miami-Dade Hous. Agency, 501 F.3d 1241, 1243 n.2 (11th Cir. 2007) (per curium); *see also* Behlen v. Merrill Lynch, 311 F.3d 1087, 1095 (11th Cir. 2002); *Leonard*, 279 F.3d at 972 (noting that "the critical time is the date of removal"); Poore v. Am.-Amicable Life Ins. Co. of Tex., 218 F.3d 1287, 1290–91 (11th Cir. 2000), *abrogated by* Alvarez v. Uniroyal Tire Co., 508 F.3d 639 (11th Cir. 2007).

141. Tillman v. R.J. Reynolds Tobacco Co., 253 F.3d 1302, 1306 n.1 (11th Cir. 2001) (per curiam). *But see Gibson*, 108 U.S. at 563 (holding that diversity of citizenship, when the basis of jurisdiction, must exist at the time of the filing of the original action, as well as at the time of the petition for removal).

142. *See* D.J. McDuffie, Inc. v. Old Reliable Fire Ins. Co., 608 F.2d 145, 147 (5th Cir. 1979).

143. *Caterpillar Inc.*, 519 U.S. at 64.

144. *Compare id.* at 76–77, *with* Sun Printing & Publ'g Ass'n v. Edwards, 194

> Despite a federal trial court's threshold denial of a motion to remand, if, at the end of the day and case, a *jurisdictional* defect remains uncured, the judgment must be vacated. . . . In this case, however, no jurisdictional defect lingered through judgment in the District Court. To wipe out the adjudication post-judgment, and return to state court a case now satisfying all federal jurisdictional requirements, would impose an exorbitant cost on our dual court system, a cost incompatible with the fair and unprotracted administration of justice.[145]

e. *Effect of Subsequent Acts on Diversity Jurisdiction*

"[I]f a district court has subject matter jurisdiction over a diversity action at the time of removal, subsequent acts do not divest the court of its jurisdiction over the action."[146]

B. *Types of Parties*

Over time, the Supreme Court of the United States and the Eleventh Circuit have further developed the requirements for how a federal court determines a party's citizenship in the context of diversity jurisdiction.[147] The rules vary, depending on the type of parties.[148] Those rules are analyzed further below.[149]

U.S. 377, 382 (1904).

145. *Caterpillar Inc.*, 519 U.S. at 76–77 (citations omitted).

146. Behlen v. Merrill Lynch, 311 F.3d 1087, 1095 (11th Cir. 2002) (explaining that changes to pleadings made after removal in diversity cases do not deprive the court of supplemental jurisdiction); Poore v. Am.-Amicable Life Ins. Co. of Tex., 218 F.3d 1287, 1290–91 (11th Cir. 2000), *abrogated by* Alvarez v. Uniroyal Tire Co., 508 F.3d 639 (11th Cir. 2007). *But see* Ingram v. CSX Transp., Inc., 146 F.3d 858, 862 (11th Cir. 1998) (stating that, after removal, plaintiff destroyed diversity by joining non-diverse defendant, but defect could be cured by dismissing non-diverse defendant).

147. *See* Hertz Corp. v. Friend, 559 U.S. 77, 80 (2010); Molinos Valle Del Cibao, C. por A. v. Lama, 633 F.3d 1330, 1341–42 (11th Cir. 2011); McCormick v. Aderholt, 293 F.3d 1254, 1258 (11th Cir. 2002) (per curiam); Taylor v. Appleton, 30 F.3d 1365, 1367 (11th Cir. 1994).

148. *Compare McCormick*, 293 F.3d at 1257–58, *with Hertz Corp.*, 559 U.S. at 80.

149. *See infra* Parts IV.B.1–12.

1. Individuals

a. *General Rules*

The plaintiff is required to allege natural parties' citizenship, not residence.[150] As the court has observed, "[t]o be a citizen of a [s]tate within the meaning of [§] 1332, a natural person must be both a citizen of the United States, and a domiciliary of that [s]tate. For diversity purposes, citizenship means domicile; mere residence in the [s]tate is not sufficient."[151] Furthermore, the federal court applies federal law, not state law, to determine a party's citizenship under § 1332.[152] For purposes of diversity jurisdiction, "[t]he word 'States' . . . includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico."[153]

The Eleventh Circuit has stated that a person's "[c]itizenship is equivalent to *domicile* for purposes of diversity jurisdiction."[154] The court has defined a party's domicile as "the place of 'his true, fixed, and permanent home and principal establishment, and to which he has the intention of returning whenever he is absent therefrom.'"[155] There is a presumption that a person is a domiciliary of the State of his birth, unless and until he acquires a new domicile, regardless of whether his parents were citizens of that State.[156] In order to demonstrate a change in domicile, a party must show both: "(1) physical presence at the new location, [and] (2) an intention to remain there indefinitely."[157]

b. *United States Citizens Living Abroad*

"[United States] citizens domiciled abroad are neither 'citizens of a State' under § 1332(a) nor 'citizens or subjects of a foreign state' and therefore are not proper parties to a diversity action in federal court."[158] In determining

150. *Molinos Valle Del Cibao, C. por A.*, 633 F.3d at 1342 n.12; *Taylor*, 30 F.3d at 1367 ("Citizenship, not residence, is the key fact that must be alleged in the complaint to establish diversity for a natural person.").

151. Mas v. Perry, 489 F.2d 1396, 1399 (5th Cir. 1974) (citations omitted); *see also* 28 U.S.C. § 1332 (2012).

152. *Mas*, 489 F.2d at 1399; *see also* 28 U.S.C. § 1332.

153. 28 U.S.C. § 1332(e).

154. McCormick v. Aderholt, 293 F.3d 1254, 1257 (11th Cir. 2002) (per curiam).

155. *Id.* at 1257–58 (quoting *Mas*, 489 F.2d at 1399).

156. *See* Gregg v. La. Power & Light Co., 626 F.2d 1315, 1317 (5th Cir. 1980).

157. *McCormick*, 293 F.3d at 1258.

158. Molinos Valle Del Cibao, C. por A. v. Lama, 633 F.3d 1330, 1341 (11th Cir. 2011); *see also* 28 U.S.C. § 1332(a).

that a United States citizen domiciled abroad destroyed diversity jurisdiction, the Supreme Court of the United States applied the following reasoning:

> In order to be a citizen of a [s]tate within the meaning of the diversity statute, a natural person must both be a citizen of the United States *and* be domiciled within the [s]tate. The problem in this case is that Bettison, although a United States citizen, has no domicile in any [s]tate. He is therefore *stateless* for purposes of § 1332(a)(3). Subsection 1332(a)(2), which confers jurisdiction in the [d]istrict [c]ourt when a citizen of a [s]tate sues aliens only, also could not be satisfied because Bettison is a United States citizen.[159]

Although *Newman-Green, Inc. v. Alfonzo-Larrain*[160] applied this rule in the context of a defendant, it also applies to a United States citizen living abroad who is a plaintiff to a lawsuit: "A United States citizen with no domicile in any state of this country is *stateless* and cannot satisfy the complete diversity requirement when she, or her estate, files an action against a United States citizen."[161]

There is one important exception to this rule.[162] "[A] citizen of a state does not lose her domicile when her employer sends her abroad," or, in other words, when the citizen is living abroad "'in the exercise of some particular profession.'"[163]

c. *Dual Citizenship*

There is also a special rule for individuals who have dual citizenship.[164] The Eleventh Circuit has stated that "an individual who is a dual citizen of the United States and another nation is only a citizen of the United States for the purposes of diversity jurisdiction under § 1332(a)."[165]

---

159. Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 827–28 (1989) (emphasis in original) (citations omitted) (case in which one defendant was a United States citizen living overseas); *see also* 28 U.S.C. § 1332(a)(2)–(3).

160. 490 U.S. 826 (1989).

161. King v. Cessna Aircraft Co., 505 F.3d 1160, 1170 (11th Cir. 2007); *see also Newman-Green, Inc.*, 490 U.S. at 828–29; Smith v. Carter, 545 F.2d 909, 911 (5th Cir. 1977) ("[A] United States citizen who is a permanent resident of a foreign country may not invoke federal diversity jurisdiction under 28 U.S.C. § 1332.").

162. *See King*, 505 F.3d 1171–72.

163. *Id.* at 117–72 (quoting Ennis v. Smith, 55 U.S. 400, 423 (1853)).

164. Molinos Valle Del Cibao, C. por A. v. Lama, 633 F.3d 1330, 1341 (11th Cir. 2011).

165. *Id.*; *see also* 28 U.S.C. § 1332(a) (2012).

d. *Permanent Resident Aliens*

The district court does not have diversity jurisdiction of "an action between citizens of a [s]tate and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same [s]tate."[166]

e. *Other Aliens*

For a full discussion of how other aliens are treated for purposes of diversity jurisdiction, see Part IV.B.12.[167]

2. Corporations

Pursuant to 28 U.S.C. § 1332(c)(1), "a corporation shall be deemed to be a citizen of every [s]tate and foreign state by which it has been incorporated and of the [s]tate or foreign state where it has its principal place of business."[168] Thus, "the complaint must allege either the corporation's state of incorporation or principal place of business."[169] As demonstrated below, the interpretation of this statute has been more complicated in practice, and as a result, a number of Eleventh Circuit and Supreme Court cases provide further guidance for its application.[170]

a. *Domestic Corporations–Principal Place of Business*

i. The "Nerve Center" Test

"[T]he phrase 'principal place of business' refers to the place where the corporation's high level officers direct, control, and coordinate the corporation's activities."[171] The Supreme Court has observed that "in practice, [the principal place of business] should . . . be the place where the corporation maintains its headquarters—provided that the headquarters is the actual center of direction, control, and coordination, *i.e.*, the 'nerve center,' and not simply an office where the corporation holds its board meetings."[172]

166. 28 U.S.C. § 1332(a)(2).
167. *See infra* Part IV.B.12.
168. 28 U.S.C. § 1332(c)(1).
169. Taylor v. Appleton, 30 F.3d 1365, 1367 (11th Cir. 1994); *see also* 28 U.S.C. § 1332(c)(1).
170. *See infra* Part B.2.a.
171. Hertz Corp. v. Friend, 559 U.S. 77, 80–81 (2010) (noting that some lower federal courts have referred to that place as the corporation's "nerve center").
172. *Id.* at 93.

By taking this approach in *Hertz Corp. v. Friend*,[173] the Supreme Court specifically rejected an approach to the "principal place of business" determination that measured the amount of business conducted within a state and compared that amount to the amount of business conducted in other states.[174]

The Eleventh Circuit has not specifically addressed this issue in a published case since the Supreme Court decided *Hertz Corp*.[175] However, prior to *Hertz Corp.*, the Eleventh Circuit applied a "total activities" test to determine a corporation's principal place of business.[176] In *MacGinnitie v. Hobbs Group, LLC*,[177] the court described the "total activities" test as follows:

> [The "total activities"] test combines the "place of activities" test and the "nerve center" test used by other circuits. Under the "place of activities" test, the location of the majority of the corporation's sales or production activities is its principal place of business. Under the "nerve center" test, the location of the corporate offices is generally the principal place of business.
>
> . . . .
>
> The total activities test requires a somewhat subjective analysis to choose between the results of the nerve center and place of activities tests, if they differ. . . . Where a company's activities are not concentrated in one place, a district court is entitled "to give these 'nerve-center'-related facts greater significance" in determining principal place of business.[178]

In light of the Supreme Court's decision in *Hertz Corp.*, the Eleventh Circuit's application of the "total activities" test to determine a corporation's "principal place of business," as the Court did in *MacGinnitie* and earlier cases, appears to no longer be good law.[179]

---

173. 559 U.S. 77 (2010).

174. *See id.* at 93–95.

175. *See id.*; *cf.* Holston Inv., Inc. v. LanLogistics Corp., 677 F.3d 1068, 1071 (11th Cir. 2012) (per curiam) (noting that, in *Hertz*, the Supreme Court "announced a simple rule wherein a corporation's principal place of business is determined based on where the corporation's 'nerve center' is located").

176. MacGinnitie v. Hobbs Grp., LLC, 420 F.3d 1234, 1239 (11th Cir. 2005).

177. 420 F.3d 1234 (11th Cir. 2005).

178. *Id.* at 1239 (citations omitted).

179. *Compare Hertz Corp.*, 559 U.S. at 80, 93–95, *with MacGinnitie*, 420 F.3d at 1239.

ii. Application

Applying the standard set out in *Hertz Corp.*, the Supreme Court determined that the mere filing of a Securities and Exchange Commission form "listing a corporation's 'principal executive offices' would, without more, be sufficient proof to establish a corporation's 'nerve center,'" and thus its "principal place of business" for diversity jurisdiction purposes.[180]

The Eleventh Circuit has also refused to apply alter ego theory in the context of diversity jurisdiction; thus, for diversity purposes, the Florida incorporation of a subsidiary could not be ignored on the ground that the subsidiary was the alter ego of its non-Florida citizen parent corporation and that the parent's California citizenship should be imputed to the subsidiary.[181]

b. *Domestic Corporation with Principal Place of Business Outside of United States*

There is a special rule for a domestic corporation whose principal place of business is outside of the United States.[182] In *Cabalceta v. Standard Fruit Co.*,[183] the Eleventh Circuit held that if "a domestic corporation's world-wide principal place of business is not in one of the United States, the District of Columbia, or Puerto Rico, . . . then the foreign principal place of business cannot be considered for diversity jurisdiction purposes."[184] However, 28 U.S.C. § 1332(c)(1) was amended effective January 2012.[185] That provision now states: "[A] corporation shall be deemed to be a citizen of every [s]tate and foreign state by which it has been incorporated *and* of the [s]tate or foreign state where it has its principal place of business."[186] It is unclear whether Eleventh Circuit's holding from *Cabalceta* is still good law after that amendment.[187]

180. *Hertz Corp.*, 559 U.S. at 97.

181. Fritz v. Am. Home Shield Corp., 751 F.2d 1152, 1153–54 (11th Cir. 1985).

182. *E.g.*, Cabalceta v. Standard Fruit Co., 883 F.2d 1553, 1561 (11th Cir. 1989).

183. 883 F.2d 1553 (11th Cir. 1989).

184. *Id.* at 1561.

185. *See* 28 U.S.C. § 1332(c)(1) (2012).

186. *Id.* (emphasis added). That statutory provision states a different rule for cases in which the defendant is a liability insurer. *See id.*

187. *See id.*; *Cabalceta*, 883 F.2d at 1561.

c. *Foreign Corporations*

For jurisdictional purposes, federal courts treat the corporation of a foreign state as a citizen of that state.[188] However, if a foreign corporation has its principal place of business in the United States, it is a citizen of the state in which its principal place of business is located.[189] However, a corporation "owned by a foreign state is . . . deemed a *foreign state* for purposes of federal jurisdiction."[190] In that case, diversity jurisdiction will not exist unless the foreign state-owned corporation is the plaintiff, pursuant to 28 U.S.C. § 1332(a)(4).[191]

For additional discussion of alienage jurisdiction, see Part IV.B.12.[192]

d. *Corporations Chartered Pursuant to Federal Law*

Pursuant to 28 U.S.C. § 1348, "[a]ll national banking associations shall, for the purposes of all other actions by or against them, be deemed citizens of the [s]tates in which they are respectively located."[193] However, the statute does not further define how the court should determine a national bank's location.[194] The Supreme Court has subsequently provided further guidance, holding in *Wachovia Bank v. Schmidt*[195] that "a national bank, for § 1348 purposes, is a citizen of the [s]tate in which its main office, as set forth in its articles of association, is located."[196]

Prior to *Wachovia Bank*, the Eleventh Circuit had stated that a federal savings bank, as a corporation chartered pursuant to federal law, "would not be a citizen of any state for diversity purposes and diversity jurisdiction would not exist unless the corporation's activities were sufficiently *localized* in one

188. *See* JPMorgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd., 536 U.S. 88, 91 (2002).

189. Vareka Invs., N.V. v. Am. Inv. Props., Inc., 724 F.2d 907, 909 (11th Cir. 1984) ("[A] foreign corporation is deemed to be a citizen of the state in which it has its principal place of business."); *see also* Jerguson v. Blue Dot Inv., Inc., 659 F.2d 31, 32–33 (5th Cir. 1981) (determining that, pursuant to 28 U.S.C. § 1332(c), a Panamanian corporation was a citizen of Florida for purposes of diversity jurisdiction because its principal place of business was located in Florida).

190. *See* Vermeulen v. Renault, U.S.A., Inc., 985 F.2d 1534, 1542 (11th Cir. 1993).

191. *See* 28 U.S.C. § 1332(a)(4); *Vermeulen*, 985 F.2d at 1542.

192. *See infra* Part IV.B.12.

193. 28 U.S.C. § 1348.

194. *See id.*

195. 546 U.S. 303 (2006), *rev'd*, 999 F. Supp. 2d 1171 (2013).

196. *Id.* at 307.

state."[197] However, after *Wachovia Bank*, the Court's analysis in *Loyola Federal Savings Bank v. Fickling*[198] should no longer be good law.[199]

e. *Dissolved or Inactive Corporations*

Circuit courts that have considered the issue are divided regarding whether a dissolved or inactive corporation has a principal place of business.[200] In *Holston Investments, Inc. v. LanLogistics Corp.*,[201] the Eleventh Circuit adopted a bright-line rule for this issue: "[A] dissolved corporation has no principal place of business."[202] Thus, a dissolved corporation is only a citizen of its state of incorporation.[203]

3. Unincorporated Associations

Unincorporated associations are treated differently than corporations when it comes to citizenships analysis.[204]

> [U]nincorporated associations do not themselves have any citizenship, but instead must prove the citizenship of each of their members to meet the jurisdictional requirements of 28 U.S.C. § 1332. Furthermore, no matter the particular features of an unincorporated entity, it has long been "[t]he tradition of the common law . . . to treat as legal persons only incorporated groups and to assimilate all others to partnerships," which must plead the citizenship of each member.[205]

Thus, an unincorporated association has no legal existence separate from its individual members, even if state law permits the unincorporated association to "sue or be sued in the association['s] name."[206]

---

197. Loyola Fed. Sav. Bank v. Fickling, 58 F.3d 603, 606 (11th Cir. 1995).

198. 58 F.3d 603 (11th Cir. 1995).

199. *See Wachovia Bank*, 546 U.S. at 317–19; *Loyola Fed. Sav. Bank*, 58 F.3d at 606.

200. *See* Holston Invs., Inc. v. LanLogistics Corp., 677 F.3d 1068, 1070–71 (11th Cir. 2012) (per curiam) (discussing the various approaches to this issue used by other circuits).

201. 677 F.3d 1068 (11th Cir. 2012) (per curiam).

202. *Id.* at 1071.

203. *See id.*

204. *See* Underwriters at Lloyd's v. Osting-Schwinn, 613 F.3d 1079, 1081, 1086 (11th Cir. 2010).

205. *Id.* at 1086 (alteration in original) (quoting Puerto Rico v. Russell & Co., 288 U.S. 476, 480 (1933)).

206. *Id.* at 1091 (quoting Calagaz v. Calhoon, 309 F.2d 248, 251–52 (5th Cir. 1962)).

a. *Limited Liability Companies (LLCs)*

With this standard in mind, the Eleventh Circuit has held that "a limited liability company . . . 'is a citizen of any state of which a member of the company is a citizen.' . . . 'To sufficiently allege the citizenships of these unincorporated business entities, a party must list the citizenships of all the members of the limited liability company.'"[207] Applying this rule, it is not enough for the complaint to allege that an "[LLC was] created under the laws of the [s]tate of Georgia, with its principal place of business . . . in Scottsdale, Georgia."[208]

b. *Partnerships: General and Limited*

Similar to the approach taken for LLCs, for purposes of diversity jurisdiction, a partnership's citizenship "depends on the citizenship of each of its partners."[209] Accordingly, "a limited partnership is a citizen of each state in which any of its [general or limited] partners . . . are citizens."[210] Furthermore, when one of the partners is also a partnership, the district court should inquire into the citizenship of the second partnership's partners as well.[211]

c. *Syndicates*

Syndicates—such as the underwriters associated with Lloyd's of London—are required to plead every member's citizenship, just like other unincorporated associations.[212]

---

207. Mallory & Evans Contractors & Eng'rs, L.L.C. v. Tuskegee Univ., 663 F.3d 1304, 1305 (11th Cir. 2011) (per curiam) (quoting Rolling Greens MHP, L.P. v. Comcast SCH Holdings L.L.C., 374 F.3d 1020, 1022 (11th Cir. 2004) (per curiam)); *see also* Flintlock Constr. Servs., L.L.C. v. Well-Come Holdings, L.L.C., 710 F.3d 1221, 1224 (11th Cir. 2013).

208. *Mallory & Evans Contractors & Eng'rs, LLC*, 663 F.3d at 1305; *see also Flintlock Constr. Servs., L.L.C.*, 710 F.3d at 1224; *Rolling Greens MHP, L.P.*, 374 F.3d at 1021, 1022.

209. Village Fair Shopping Ctr. Co. v. Sam Broadhead Trust, 588 F.2d 431, 433 n.1 (5th Cir. 1979).

210. *Rolling Greens MHP, L.P.*, 374 F.3d at 1021; *see also* Carden v. Arkoma Assocs., 494 U.S. 185, 195–96 (1990).

211. *Village Fair Shopping Ctr. Co.*, 588 F.2d at 433 n.1.

212. *See* Underwriters at Lloyd's v. Osting-Schwinn, 613 F.3d 1079, 1088–89 (11th Cir. 2010).

d. *Unincorporated Joint Stock Companies*

Federal courts treat unincorporated joint stock companies as partnerships for purposes of diversity jurisdiction and apply the same rules for determining citizenship.[213]

e. *Unincorporated National Labor Unions*

The Supreme Court of the United States has stated that federal courts should not treat unincorporated national labor unions as corporations for diversity purposes but instead should look to the citizenship of the union's members.[214]

f. *Unincorporated Business Trusts*

The Eleventh Circuit has held that the citizenship of an unincorporated business trust is to be determined on the basis of the citizenship of its shareholders.[215] However, the court has also stated that a business trust is neither a corporation nor an association, and therefore, where the trustees hold, manage, and dispose of trust assets for the benefit of trust beneficiaries, the court should consider the citizenship of trustees rather than trust beneficiaries.[216]

g. *The Exception: Sociedad en Comandita*

As an exception to the general rule that the citizenship of an unincorporated association is determined by the citizenship of its individual members, the Supreme Court has held that a *sociedad en comandita*—an entity created under the civil law of Puerto Rico—could be treated as a citizen of Puerto Rico for purposes of diversity jurisdiction.[217] In coming to this

213. *See* Chapman v. Barney, 129 U.S. 677, 682 (1889).

214. *See* United Steelworkers of Am., AFL-CIO v. R.H. Bouligny, Inc., 382 U.S. 145, 147, 149–53 (1965).

215. *See* Riley v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 292 F.3d 1334, 1337–39 (11th Cir. 2002); Laborers Local 938 Joint Health & Welfare Trust Fund v. B.R. Starnes Co. of Fla., 827 F.2d 1454, 1457 (11th Cir. 1987) (per curiam) ("[T]he Trust Funds, which appear to be voluntary unincorporated associations, are not citizens of any particular state; rather, the citizenship of trust fund members is determinative of the existence of diversity of citizenship."); Xaros v. U.S. Fid. & Guar. Co., 820 F.2d 1176, 1181–82 (11th Cir. 1987) (determining that, because trust funds were voluntary unincorporated associations, the citizenship of their members was determinative of the existence of diversity of citizenship).

216. *See* Navarro Sav. Ass'n v. Lee, 446 U.S. 458, 460, 462, 463 nn. 10, 11, 465–66 (1980).

217. Puerto Rico v. Russell & Co., 288 U.S. 476, 482 (1933).

determination, the Court reasoned that the *sociedad's* juridical personality "is so complete in contemplation of the law of Puerto Rico that we see no adequate reason for holding that the *sociedad* has a different status for purposes of federal jurisdiction than a corporation organized under that law."[218]

4. Receivers

In an action by or against a receiver, the district court should consider the citizenship of the receiver for purposes of diversity jurisdiction.[219] However, the case law distinguishes between situations in which a receiver is a proper party to litigation—and thus his citizenship should be considered—versus those in which he is not a proper party, and his citizenship should be ignored in diversity determinations.[220] In the former, the receiver is a proper party because another party seeks to take property out of his possession or seeks relief against his acts.[221] However, the receiver is not a proper party to litigation affecting parties' rights in property not in his possession, or to litigation asserting rights to said property in his possession without disturbing his possession thereof.[222]

5. Liability Insurance Companies

a. *Statutory Basis*

Section 1332 provides special rules for determining a liability insurance company's citizenship for diversity purposes:

> [I]n any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of–
>
> (A) every [s]tate and foreign state of which the insured is a citizen;
>
> (B) every [s]tate and foreign state by which the insurer has been incorporated; and

---

218. *Id.*
219. *See* Mitchell v. Maurer, 293 U.S. 237, 241–42 (1934).
220. *See* U.S. Mortg. & Trust Co. v. Mo., K. & T. Ry. Co., 269 F. 497, 500–01 (5th Cir. 1921).
221. *Id.* at 501.
222. *Id.*

> (C) the [s]tate or foreign state where the insurer has its principal place of business.[223]

b. *Case Law Interpreting These Provisions*

The "direct action" provision in 28 U.S.C. § 1332(c)(1) is limited to actions *against* insurers and thus is not applicable to a workers' compensation action brought in federal court *by* an insurer.[224] Thus, 28 U.S.C. § 1332(c)(1) "will defeat diversity jurisdiction only if the claim which the third party has against the insured—for intentional tort, negligence, fraud, etc.—is the same one asserted against the insurance company as within the zone of primary liability for which the company issued the policy."[225] As the Eleventh Circuit has observed, "courts have *uniformly defined* the term 'direct action' to refer to 'those cases in which a party suffering injuries or damage for which another is legally responsible is entitled to bring suit against the other's liability insurer without joining the insured or first obtaining a judgment against him.'"[226]

In contrast:

> [W]here the suit, brought either by the insured or by an injured third party, is based not on the primary liability covered by the liability insurance policy but on the insurer's failure to settle within policy limits or in good faith, the [§] 1332(c) direct action proviso does not preclude diversity jurisdiction.[227]

In *Fortson v. St. Paul Fire & Marine Ins. Co.*,[228] the court explained that, "unless the cause of action against the insurance company is of such a nature that the liability sought to be imposed could be imposed against the insured, the action is not a direct action."[229]

223. 28 U.S.C. § 1332(c)(1) (2012).

224. *Id.*; Northbrook Nat'l Ins. Co. v. Brewer, 493 U.S. 6, 7 (1989); *see also* Dairyland Ins. Co. v. Makover, 654 F.2d 1120, 1125 (5th Cir. 1981) (holding that § 1332(c) does not apply to a "declaratory judgment action in which a liability insurer is the plaintiff").

225. John Cooper Produce, Inc. v. Paxton Nat'l Ins. Co., 774 F.2d 433, 435 (11th Cir. 1985) (per curiam); *see also* 28 U.S.C. § 1332(c)(1).

226. Kong v. Allied Prof'l Ins. Co., 750 F.3d 1295, 1300 (11th Cir. 2014) (quoting Fortson v. St. Paul Fire & Marine Ins. Co., 751 F.2d 1157, 1159 (11th Cir. 1985)) (emphasis omitted).

227. *Fortson*, 751 F.2d at 1159; *see also* 28 U.S.C. § 1332(c).

228. 751 F.2d 1157 (11th Cir. 1985).

229. *Id*. at 1159.

6. Institutions of Higher Learning

The Eleventh Circuit held that a complaint insufficiently alleged the citizenship of Tuskegee University when it stated that Tuskegee University was "'an Alabama institution of higher learning, located in Macon County, Alabama.'"[230] The court has also applied an Eleventh Amendment immunity analysis to determine that a state university was not a state *citizen* for the purpose of diversity jurisdiction.[231]

7. Unincorporated Indian Tribes

There is also a special rule for determining the citizenship of unincorporated Indian tribes.[232] As the Eleventh Circuit has observed, "unincorporated Indian tribes cannot sue or be sued in diversity under 28 U.S.C. § 1332(a)(1) because they are not citizens of any state."[233]

8. Estates

"Where an estate is a party, . . . the citizenship that counts for diversity purposes is that of the decedent."[234] Thus, the legal representative of the estate is also deemed to be a citizen of the same state as the decedent.[235]

Note: Prior to May 18, 1989, "federal diversity jurisdiction in estate cases was determined by looking [into] the domicile of the representative of the estate," rather than the decedent's domicile.[236] On that date, the amendment to 28 U.S.C. § 1332 requiring courts to "look to the domicile of the decedent to determine diversity jurisdiction" went into effect.[237] Thus, as to this issue, case law predating the 1989 amendment is no longer good law.[238]

---

230. Mallory & Evans Contractors & Eng'rs, L.L.C. v. Tuskegee Univ., 663 F.3d 1304, 1305 (11th Cir. 2011) (per curiam).

231. *See* Univ. of S. Ala. v. Am. Tobacco Co., 168 F.3d 405, 412 (11th Cir. 1999).

232. Miccosukee Tribe of Indians of Fla. v. Kraus-Anderson Constr. Co., 607 F.3d 1268, 1276 (11th Cir. 2010).

233. *Id.*; *see also* 28 U.S.C. § 1332(a)(1) (2012).

234. Moore v. N. Am. Sports, Inc., 623 F.3d 1325, 1327 n.2 (11th Cir. 2010) (per curiam); *see also* 28 U.S.C. § 1332(c)(2).

235. 28 U.S.C. § 1332(c)(2); *see also* King v. Cessna Aircraft Co., 505 F.3d 1160, 1170 (11th Cir. 2007) ("Where an estate is a party, the citizenship that counts for diversity purposes is that of the decedent, and she is deemed to be a citizen of the state in which she was domiciled at the time of her death.").

236. Glickstein v. Sun Bank/Miami, N.A., 922 F.2d 666, 668 n.3 (11th Cir. 1991).

237. *Id.*; *see also* 28 U.S.C. § 1332(c)(2).

238. *See Glickstein*, 922 F.2d at 668 n.3.

9. Infants and Incompetents

Section 1332 provides that "the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same [s]tate as the infant or incompetent."[239]

10. States

Special diversity jurisdiction rules also apply when a state is a party to the case.[240] A state is not a citizen of a state for the purpose of diversity jurisdiction.[241]

> A public entity or political subdivision of a state, unless simply an 'arm or alter ego of the State,' however, is a citizen of the state for diversity purposes. Therefore, if a party is deemed to be 'an arm or alter ego of the State,' then diversity jurisdiction must fail.[242]

When analyzing whether diversity jurisdiction exists over cases involving state entities as parties, the Eleventh Circuit has applied the Eleventh Amendment immunity analysis to determine the citizenship of the state entities.[243]

11. State Agencies and State-Created Public Entities

a. *Test for Determining Whether a State Agency Is a Citizen of a State*

The Eleventh Circuit has applied the following analysis to determine whether state agencies are "sufficiently separate and independent from the state so as to confer *citizen* status upon them" for purposes of diversity jurisdiction:

> (1) whether the agency can be sued in its own name; (2) whether the agency can implead and be impleaded in any competent court; (3) whether the agency can contract in its own name; (4) whether the agency can acquire, hold title to, and dispose of property in its own name; and (5) whether the agency can be considered a *body*

239. 28 U.S.C. § 1332(c)(2).
240. *See* Moor v. Cnty. of Alameda, 411 U.S. 693, 717 (1973).
241. *Id.*; Univ. of S. Ala. v. Am. Tobacco Co., 168 F.3d 405, 412 (11th Cir. 1999); Coastal Petroleum Co. v. U.S.S. Agri-Chems., 695 F.2d 1314, 1317 (11th Cir. 1983).
242. *Univ. of S. Ala.*, 168 F.3d at 412 (quoting *Moor*, 411 U.S. at 717).
243. *Id.*; *Coastal Petroleum Co.*, 695 F.2d at 1318.

> *corporate* having the rights, powers and immunities incident to corporations.[244]

As demonstrated below, the Eleventh Circuit takes a case-by-case approach to this analysis.[245]

b. *Specific Examples*

i. State Universities

As discussed above, the Eleventh Circuit applied the Eleventh Amendment immunity analysis to determine that a state university was not a state *citizen* for the purpose of diversity jurisdiction.[246]

ii. A State Entity's Board of Trustees

The Supreme Court held—in a case in which the Board of Trustees of the Ohio State University was a party—that the complaint must allege the citizenship of each individual trustee because the board was not a corporation, even though under state law the Board had the power to sue and be sued, enter into contracts, and supervise lands and other property of the university under its collective name.[247]

Taking a different approach, the Eleventh Circuit determined that the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida was a citizen of Florida for purposes of diversity jurisdiction because the title of the land in dispute was vested with the Trustees and "because the Trustees ha[d] acted . . . as a separate and distinct entity from the state."[248]

iii. Florida Department of Health and Rehabilitative Services

In *Florida Department of Health & Rehabilitative Services v. Davis*,[249] the Eleventh Circuit determined that diversity jurisdiction was proper because Florida's Department of Health and Rehabilitative Services "[was vested] with the power to sue and be sued and possessed other generally recognized corporate powers."[250]

---

244. *Coastal Petroleum Co.*, 695 F.2d at 1318.
245. *See infra* Part IV.B.11.b.
246. *Univ. of S. Ala.*, 168 F.3d at 412; *see supra* Part IV.B.6, 10.
247. *See* Thomas v. Bd. of Trs. of the Ohio State Univ., 195 U.S. 207, 213–18 (1904).
248. *Coastal Petroleum Co.*, 695 F.2d at 1316, 1318.
249. 616 F.2d 828 (5th Cir. 1980).
250. *Id.* at 833.

iv. State Bar

In contrast, the Fifth Circuit held that the Florida Bar, having been explicitly created by and existing under the Supreme Court of Florida as an "official arm of th[at] court," could not be sued in federal court under diversity jurisdiction.[251]

v. Board of Commissioners of the Port of New Orleans

The Fifth Circuit has determined that the Board of Commissioners of the Port of New Orleans—created by state law, granting the Board all of the rights, powers, and immunities incident to a corporation and specifically granting to it various business powers, including authority to employ legal services and engage counsel—is a separate entity from the State of Louisiana for diversity purposes.[252]

vi. Alabama State Docks Department

The Alabama State Docks Department is merely the alter ego of the State of Alabama and thus is not a citizen of Alabama for purposes of diversity jurisdiction.[253]

vii. Political Subdivisions, such as Municipalities or Counties

"It is well settled that for the purposes of diversity of citizenship, political subdivisions are citizens of their respective [s]tates."[254] Thus, "a municipality which is independent in character and function from the state should be considered a citizen for § 1332 diversity."[255] Moreover, a county may be a citizen for purposes of diversity jurisdiction if, under state law, it has a sufficiently independent corporate character.[256]

---

251. *See* Dacey v. Fla. Bar, Inc., 414 F.2d 195, 196, 198 (5th Cir. 1969).

252. C.H. Leavell & Co. v. Bd. of Comm'rs, 424 F.2d 764, 765–67 (5th Cir. 1970).

253. Centraal Stikstof Verkoopkantoor, N.V. v. Ala. State Docks Dep't, 415 F.2d 452, 457 (5th Cir. 1969).

254. Illinois v. City of Milwaukee, 406 U.S. 91, 97 (1972), *cert. granted*, 445 U.S. 926 (1980), *vacated*, 451 U.S. 304 (1981). Other cases in which the Supreme Court determined that political subdivisions were citizens of a state for purposes of diversity include: Bullard v. City of Cisco, 290 U.S. 179, 180 (1933); Loeb v. Columbia Twp. Trs., 179 U.S. 472, 485–86 (1900); Chicot Cnty. v. Sherwood, 148 U.S. 529, 533–34 (1893); Lincoln Cnty. v. Luning, 133 U.S. 529, 531 (1890); Cowles v. Mercer Cnty., 74 U.S. 118, 122 (1869).

255. Reeves v. City of Jackson, 532 F.2d 491, 495 n.5 (5th Cir. 1976).

256. Moor v. Cnty. of Alameda, 411 U.S. 693, 719–21 (1973).

viii. Private Probation Companies as Officers of the Court

The Eleventh Circuit has rejected the argument that private probation companies, as officers of the court, are governmental entities for purposes of the Class Action Fairness Act of 2005 ("CAFA").[257] Instead, private probation companies are private entities, in the same way that attorneys would not qualify as government entities.[258]

12. Specific Diversity Rules for Aliens

a. *Statutory Basis for Alienage Jurisdiction*

Title 28, Section 1332 of the United States Code also sets forth specific diversity requirements for cases involving foreign citizens.[259] First, the statute provides that federal district courts have diversity jurisdiction of a civil action that meets the amount in controversy requirement and is between

> citizens of a [s]tate and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a [s]tate and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same [s]tate."[260]

Second, it allows diversity cases to be brought between "citizens of different [s]tates and in which citizens or subjects of a foreign state are additional parties."[261] Finally, the statute allows diversity cases to be brought between "a foreign state, defined in [§] 1603(a) of this title, as plaintiff and citizens of a [s]tate or of different [s]tates."[262]

b. *Case Law Analyzing Alienage Jurisdiction*

The Eleventh Circuit has held that aliens who are in the United States on non-immigrant work visas are not permanent residents for purposes of 28

257. McGee v. Sentinel Offender Servs., L.L.C., 719 F.3d 1236, 1242 (11th Cir. 2013) (per curiam); *see also* Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (2005) (codified as amended at 28 U.S.C. §§ 1332(d), 1453, 1711–1715 (2012)).

258. *McGee*, 719 F.3d at 1242.

259. *See* 28 U.S.C. § 1332(a)(2)–(4) (2012).

260. *Id.* § 1332(a)(2).

261. *Id.* § 1332(a)(3).

262. *Id.* § 1332(a)(4); *see also* 28 U.S.C. § 1603(a).

U.S.C. § 1332(a)(2).[263] The court has determined that the permanent resident alien provision in 28 U.S.C. § 1332(a)(2) refers only to an alien's official immigration status.[264] Thus, an alien who resided in Florida for four years but had not yet attained official permanent resident status was not a citizen of Florida for purposes of diversity jurisdiction.[265] The fact that an alien resides in the United States is not relevant for diversity jurisdiction; what matters for purposes of diversity is the alien's citizenship, not residency.[266] In comparison, "an individual who is a dual citizen of the United States and another nation is only a citizen of the United States for the purposes of diversity jurisdiction under § 1332(a)."[267]

The Supreme Court has held that "the United Kingdom's retention and exercise of authority over the [British Virgin Islands ("BVI")] renders BVI citizens, both natural and juridic, 'citizens or subjects' of the United Kingdom under 28 U.S.C. § 1332(a)."[268]

c. *Foreign States*

Where a foreign state is a party to a case, diversity jurisdiction may exist if the foreign state is the plaintiff but will not exist if the foreign state is the defendant.[269] Suits may only be brought against foreign states pursuant to the Foreign Sovereign Immunities Act of 1976, rather than 28 U.S.C. § 1332.[270]

For purposes of diversity jurisdiction, a foreign state is defined as including "a political subdivision of a foreign state or an agency or instrumentality of a foreign state."[271] Furthermore, the statute defines "instrumentality of a foreign state" as:

---

263. Molinos Valle Del Cibao, C. por A. v. Lama, 633 F.3d 1330, 1340 n.10 (11th Cir. 2011); *see also* 28 U.S.C. § 1332(a)(2).

264. *Molinos Valle Del Cibao, C. por A.*, 633 F.3d at 1340 n.10.

265. Foy v. Schantz, Schatzman & Aaronson, P.A., 108 F.3d 1347, 1348–50 (11th Cir. 1997); *see also* 28 U.S.C. § 1332(a)(2).

266. Jagiella v. Jagiella, 647 F.2d 561, 563 (5th Cir. 1981).

267. *Molinos Valle Del Cibao, C. por A.*, 633 F.3d at 1341; *see also* 28 U.S.C. § 1332(a)(2).

268. JPMorgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd., 536 U.S. 88, 100 (2002); *see also* 28 U.S.C. § 1332(a).

269. 28 U.S.C. § 1332(a)(4); Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 437 n.5 (1989); Vermeulen v. Renault, U.S.A., Inc., 985 F.2d 1534, 1542 & n.11 (11th Cir. 1993).

270. *Vermeulen*, 985 F.2d at 1543; *see also* 28 U.S.C. § 1332; Foreign Sovereign Immunities Act of 1976, Pub. L. No. 94-583, 90 Stat. 2891 (codified as amended at 28 U.S.C. § 1330 (1976)).

271. 28 U.S.C. § 1603(a).

> [A]ny entity—
>
> (1) which is a separate legal person, corporate or otherwise, and
>
> (2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and
>
> (3) which is neither a citizen of a State of the United States as defined in [§] 1332(c) and (e) of this title, nor created under the laws of any third country.[272]

A corporation owned by a foreign state is deemed a *foreign state* for purposes of federal jurisdiction; thus, diversity jurisdiction will not exist unless the foreign state-owned corporation is the plaintiff, pursuant to 28 U.S.C. § 1332(a)(4).[273] In order for a foreign state to bring a diversity action under 28 U.S.C. § 1332(a)(4), at least one of the defendants must be a citizen of a state, and diversity jurisdiction does not exist if all defendants are only citizens of foreign states.[274]

C. *Complete Diversity Rule*

Title 28, Section 1332 of the United States Code "require[s] complete diversity between all plaintiffs and all defendants."[275]

D. *Exceptions to Complete Diversity Rule*

Although 28 U.S.C. § 1332 requires complete diversity, there are several exceptions to this rule, as discussed further.[276]

1. Court May Ignore Citizenship of a Plaintiff that Has Independent Basis of Original Federal Jurisdiction Against Defendant

Although the general rule is that diversity jurisdiction requires complete diversity, there is an exception to this requirement when a

---

272. *Id.* § 1603(b).

273. *Id.* § 1332(a)(4); *Vermeulen*, 985 F.2d at 1542–43.

274. 28 U.S.C. § 1332(a)(4); State Establishment for Agric. Prod. Trading v. M/V Wesermunde, 770 F.2d 987, 990–91 (11th Cir. 1985).

275. 28 U.S.C. § 1332; Lincoln Prop. Co. v. Roche, 546 U.S. 81, 89 (2005); Wis. Dep't of Corr. v. Schacht, 524 U.S. 381, 388 (1998); Caterpillar Inc. v. Lewis, 519 U.S. 61, 68 (1996).

276. *See* 28 U.S.C. § 1332; *infra* Part IV.D.1–8.

non-diverse plaintiff "has an independent basis of original . . . jurisdiction against the defendant."[277]

2. Court May Properly Exercise Diversity Jurisdiction When Non-Diverse Defendant Is Sued Under Federal Law

Similarly, the district court still may properly exercise diversity jurisdiction "when the plaintiff joins a non-diverse defendant sued under federal law with a diverse defendant sued in diversity."[278]

3. Supplemental/Ancillary Claims Asserted Between Non-Diverse Defendants

> While it is true that a nondiverse defendant must be formally dismissed from the case to permit a subsequent removal, this in effect requires only that the plaintiff dismiss all his claims asserted against the nondiverse defendant and does not prevent the federal court from exercising ancillary jurisdiction over a third-party claim against a defendant or a cross-claim between defendants. . . . Once a court has jurisdiction over a main claim, it also has jurisdiction over any claim ancillary to the main claim, regardless of the amount in controversy, citizenship of the parties or existence of a federal question in the ancillary claim.[279]

The Supreme Court cases addressing this issue were decided prior to Congress's passage of the supplemental jurisdiction statute, 28 U.S.C. § 1367, in 1990.[280] That statute specifically provides:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction

277. Palmer v. Hosp. Auth. Randolph Cnty., 22 F.3d 1559, 1564 (11th Cir. 1994); *see also* 28 U.S.C. § 1332.

278. Hiram Walker & Sons, Inc. v. Kirk Line, 877 F.2d 1508, 1511–12 (11th Cir. 1989); *see also* 28 U.S.C. § 1332; Romero v. Int'l Terminal Operating Co., 358 U.S. 354, 381 (1959).

279. Maseda v. Honda Motor Co., Ltd., 861 F.2d 1248, 1252–53 (11th Cir. 1988); *see also* Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 375–77 (1978) (holding that a diverse defendant could implead a non-diverse third-party defendant, but the plaintiff could not assert a claim against the non-diverse third-party defendant).

280. *See* 28 U.S.C. § 1367; *e.g.*, *Owen Equip. & Erection Co.*, 437 U.S. at 377.

> shall include claims that involve the joinder or intervention of additional parties.
>
> (b) In any civil action of which the district courts have original jurisdiction founded solely on [§] 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the [FRCP], or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of [§] 1332.[281]

The supplemental jurisdiction statute appears to have codified the Supreme Court's holdings with respect to these issues, and therefore these cases should still be good law.[282]

4. Nominal Parties

"[A] federal court must disregard nominal or formal parties and rest jurisdiction only upon the citizenship of real parties to the controversy."[283] Applying this rule, courts will disregard nominal, nondiverse parties in determining whether diversity jurisdiction exists.[284]

5. Statutory Interpleader Under 28 U.S.C. § 1335

Claims brought pursuant to 28 U.S.C. § 1335, applying statutory interpleader, require only minimal diversity; the plaintiff does not have to be diverse from the defendants, but at least two defendants must be diverse from each other.[285]

---

281. 28 U.S.C. § 1367(a)–(b).

282. *Id.* § 1367; *e.g.*, *Owen Equip. & Erection Co.*, 437 U.S. at 377.

283. Navarro Sav. Ass'n v. Lee, 446 U.S. 458, 461 (1980); *see also* Bacon v. Rives, 106 U.S. 99, 104 (1882) (holding that the joinder of formal parties, destitute of interest, cannot oust the federal court of jurisdiction).

284. *See, e.g.*, Salem Trust Co. v. Mfr.'s Fin. Co., 264 U.S. 182, 190 (1924) (determining depository of a trust was a nominal party when it had no interest in the outcome); Geer v. Mathieson Alkali Works, 190 U.S. 428, 437 (1903) (holding that corporate directors were nominal parties when the relief prayed for by plaintiffs against both a company and its directors was to be recovered from the company only); Removal Cases, 100 U.S. 457, 469 (1879) (holding that the railroad was a nominal party for removal purposes after it resolved its dispute with the defendant and had no common interest with the trustee plaintiffs).

285. 28 U.S.C. § 1335(a)(1); State Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523, 530 (1967); Haynes v. Felder, 239 F.2d 868, 874 (5th Cir. 1957).

6. Class Actions

The statute sets forth requirements of minimal diversity, rather than total diversity, for class actions brought pursuant to the federal court's diversity jurisdiction.[286]

For further discussion of diversity jurisdiction and class actions, see Part V.[287]

7. Total Diversity Rule and Alienage Jurisdiction

a. *Jurisdiction Under 28 U.S.C. § 1332(a)(2)*

In cases in which jurisdiction is sought pursuant to 28 U.S.C. § 1332(a)(2), the presence of aliens as both plaintiff and defendant destroys full diversity under alien jurisdiction.[288]

b. *Jurisdiction Under 28 U.S.C. § 1332(a)(3)*

There is an exception to the previous rule.[289] Under 28 U.S.C. § 1332(a)(3), the district court may have diversity jurisdiction over a case in which there are aliens on both sides of the actions, as long as there are also citizens of a state on both sides.[290]

8. Removal Cases, When Non-Diverse Party Fraudulently Joined

Although the district court generally will not have diversity jurisdiction over removal cases where the parties are not completely diverse, district courts still have diversity jurisdiction when the plaintiff has

286. 28 U.S.C. § 1332(d)(2).

287. *See infra* Part V.

288. *See* 28 U.S.C. § 1332(a)(2); Molinos Valle Del Cibao, C. por A. v. Lama, 633 F.3d 1330, 1340 (11th Cir. 2011) (vacating judgment in favor of alien corporation against alien citizens because aliens' presence destroyed full diversity under alienage jurisdiction); Cabalceta v. Standard Fruit Co., 883 F.2d 1553, 1557 (11th Cir. 1989) (noting that "the presence of at least one alien on both sides of an action destroys diversity"); Ed & Fred, Inc. v. Puritan Marine Ins. Underwriters Corp., 506 F.2d 757, 758 (5th Cir. 1975) (holding that the rule of complete diversity was applicable to an action brought by an alien against a citizen of a state and another alien).

289. *See* 28 U.S.C. § 1332(a)(3).

290. *Id.*; Iraola & Cia, S.A. v. Kimberly-Clark Corp., 232 F.3d 854, 860 (11th Cir. 2000) ("It is a standard rule that federal courts do not have diversity jurisdiction over cases where there are foreign entities on both sides of the action, without the presence of citizens of a state on both sides.").

fraudulently joined non-diverse defendants in order to prevent removal.[291] The Eleventh Circuit has identified three circumstances when non-diverse parties have been fraudulently joined in state court.[292] First, fraudulent joinder exists "when there is no possibility that the plaintiff can prove a cause of action against the resident—non-diverse—defendant."[293] Second, a plaintiff may fraudulently plead jurisdictional facts in an attempt to avoid removal.[294] Finally, the Eleventh Circuit has identified a third example of fraudulent joinder: "[W]here a diverse defendant is joined with a non-diverse defendant as to whom there is no joint, several, or alternative liability and where the claim against the diverse defendant has no real connection to the claim against the non-diverse defendant."[295]

The Eleventh Circuit has stated that "'[t]he determination of whether a resident defendant has been fraudulently joined must be based upon the plaintiff's pleadings at the time of removal, supplemented by any affidavits and deposition transcripts submitted by the parties.'"[296] The district court should approach a fraudulent joinder claim in the same way that it would a motion for summary judgment under FRCP 56(b), resolving disputed questions of fact in favor of the plaintiff.[297]

With respect to the first type of fraudulent joinder, there is a fairly high hurdle for a removal attempt.[298] In *Coker v. Amoco Oil Co.*,[299] the Eleventh Circuit stated that "[i]f there is even a possibility that a state court would find that the complaint states a cause of action against any one of the resident defendants, the federal court must find that the joinder was proper and remand the case to the state court."[300] Thus, "[t]he plaintiff need not have a winning case against the allegedly fraudulent defendant; he need only have a

291. Triggs v. John Crump Toyota, Inc., 154 F.3d 1284, 1287 (11th Cir. 1998).

292. *Id.*

293. *Id.*; *see also* Coker v. Amoco Oil Co., 709 F.2d 1433, 1440 (11th Cir. 1983).

294. *Triggs*, 154 F.3d at 1287; *see also Coker*, 709 F.2d at 1440.

295. *Triggs*, 154 F.3d at 1287; *see also* Tapscott v. MS Dealer Serv. Corp., 77 F.3d 1353, 1360 (11th Cir. 1996).

296. Legg v. Wyeth, 428 F.3d 1317, 1322 (11th Cir. 2005) (alteration in original) (emphasis omitted) (quoting Pacheco De Perez v. AT&T Co., 139 F.3d 1368, 1380 (11th Cir. 1998), *cert. granted sub nom.* AT&T Corp. v. Sigala, 549 S.E.2d 373 (Ga. 2001), *superseded by statute*, GA. CODE ANN. § 9-10-31.1 (2005), *as stated in* Hewett v. Raytheon Aircraft Co., 614 S.E.2d 875 (2005)).

297. *Legg*, 428 F.3d at 1322–23; *see also* FED. R. CIV. P. 56(b).

298. *See Coker*, 709 F.2d at 1440–41.

299. 709 F.2d 1433 (11th Cir. 1983).

300. *Id.* at 1440–41.

possibility of stating a valid cause of action in order for the joinder to be legitimate."[301]

The Eleventh Circuit has addressed the third type of fraudulent joinder in the context of class action cases.[302] This Guide addresses that analysis in greater detail in Part V.[303]

E. *Exceptions Where Court Will Not Exercise Jurisdiction Even if Diversity Is Established*

1. Probate Exception

Under limited circumstances, courts will abstain from hearing a case involving wills and estates, even if there is diversity of citizenship, pursuant to the judicially-created probate exception.[304] However, this exception is narrowly construed.[305]

2. Domestic Relations Exception

a. *General Rule*

The domestic relations exception divests the federal courts of power to issue divorce, alimony, and child custody decrees but does not ordinarily include tort claims.[306] Thus, even if the district court has diversity jurisdiction, the court will abstain from hearing a claim in cases involving the

---

301. Triggs v. John Crump Toyota, Inc., 154 F.3d 1284, 1287 (11th Cir. 1998) (emphasis omitted).

302. *See Triggs*, 154 F.3d at 1287–90; Tapscott v. MS Dealer Serv. Corp., 77 F.3d 1353, 1359–60 (11th Cir. 1996).

303. *See infra* Part V.

304. *See* Markham v. Allen, 326 U.S. 490, 494 (1946), *aff'd in part, rev'd in part sub nom.* Clark v. Allen, 331 U.S. 503 (1947); Glickstein v. Sun Bank/Miami, N.A., 922 F.2d 666, 672 (11th Cir. 1991).

305. *See Markham*, 326 U.S. at 494 ("[F]ederal courts of equity have jurisdiction to entertain suits 'in favor of creditors, legatees and heirs' and other claimants against a decedent's estate to establish their claims so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court."); *Glickstein*, 922 F.2d at 672–73; Mich. Tech. Fund v. Century Nat'l Bank, 680 F.2d 736, 737–38, 740 (11th Cir. 1982) (holding that district court properly exercised jurisdiction over action against decedent's estate seeking a declaration that decedent's will conveyed certain assets to plaintiff, in spite of fact that there were pending probate proceedings and the federal court was required to interpret the will); DeWitt v. Duce, 599 F.2d 676, 677 (5th Cir. 1979) (per curiam) (holding that a suit alleging independent tort claim for intentional interference with inheritance was properly before district court based on diversity jurisdiction).

306. *See* Ankenbrandt v. Richards, 504 U.S. 689, 704 (1992).

parties' domestic affairs.[307] Speaking specifically to this issue, in *Ingram v. Hayes*,[308] the Eleventh Circuit stated that "federal courts generally dismiss cases involving divorce and alimony, child custody, visitation[] rights, establishment of paternity, child support, and enforcement of separation or divorce decrees still subject to state court modification."[309]

b. *Limitations to the Domestic Relations Exception*

"The [domestic relations] exception . . . is to be read narrowly and does not—at least, ordinarily—include third parties in its scope."[310] The Eleventh Circuit has stated that courts should not abstain from cases related to domestic-relations law "when the following factors are absent: (1) strong state interest in domestic relations; (2) competency of state courts in settling family disputes; (3) the possibility of incompatible federal and state decrees in cases of continuing judicial supervision by the state; and (4) the problem of congested federal court dockets."[311] Instead, "federal courts should dismiss the action only if hearing the claim would mandate inquiry into the marital or parent-child relationship."[312]

c. *Examples*

In *Rash v. Rash*,[313] the Eleventh Circuit determined that the domestic relations exception did not apply in a case disputing assets, specifically alimony, rights to pension, and real property, and which involved the question of which competing state decrees should be enforced.[314] Similarly, in *Kirby v. Mellenger*,[315] the court held "that the district court [had] abused its discretion [in] dismissing [the] case for lack of subject matter jurisdiction" in a diversity case in which a former wife sued her former husband to obtain a

307. *See* Rash v. Rash, 173 F.3d 1376, 1380 (11th Cir. 1999).

308. 866 F.2d 368 (11th Cir. 1988) (per curiam).

309. *Id*. at 369–70 (determining that the district court properly dismissed child support arrearage claim because claim would require district court to decide the propriety of the Alabama state court's order).

310. Stone v. Wall, 135 F.3d 1438, 1441 (11th Cir. 1998) (per curiam), *reh'g granted*, 719 So. 2d 288 (Fla. 1998); *see also Ankenbrandt*, 504 U.S. at 704 n.7 (observing that the third-party defendant in that case "would appear to stand in the same position with respect to [the plaintiff] as any other opponent in a tort suit brought in federal court pursuant to diversity jurisdiction").

311. *Stone*, 135 F.3d at 1441; *see also Ingram*, 866 F.2d at 370.

312. *Ingram*, 866 F.2d at 370.

313. 173 F.3d 1376 (11th Cir. 1999).

314. *See id.* at 1380.

315. 830 F.2d 176 (11th Cir. 1987) (per curiam).

share of his military retirement benefits not awarded under a Texas divorce decree.[316]

The Eleventh Circuit's precedent also demonstrates that a federal court may have jurisdiction over some issues but not others in this context.[317] Thus, in *Jagiella v. Jagiella*,[318] the Circuit Court determined that the district court properly exercised jurisdiction over the former wife's suit seeking alimony and child support arrears and properly refused to exercise jurisdiction the of former husband's counterclaims for modification of the divorce decree by reducing his child support payments and increasing his visitation rights and for alienage of his children's affection.[319]

3. Violations of 28 U.S.C. § 1359: Parties Improperly or Collusively Joined to Invoke Jurisdiction

Under 28 U.S.C. § 1359, "[a] district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court."[320]

V. SPECIAL RULES FOR CLASS ACTIONS AND MASS ACTIONS

Plaintiffs may bring a class action in federal court pursuant to FRCP 23.[321] If the class action relies on the federal court's diversity jurisdiction, it must meet the requirements set forth in 28 U.S.C. § 1332.[322] Specifically, § 1332(d) provides specific rules for determining when a federal court may

316. *See id.* at 178–79.

317. *See* Jagiella v. Jagiella, 647 F.2d 561, 564–65 (5th Cir. 1981).

318. 647 F.2d 561 (5th Cir. 1981).

319. *See id.* at 564–65.

320. 28 U.S.C. § 1359 (2012); *see also* Kramer v. Caribbean Mills, Inc., 394 U.S. 823, 826–29 (1969) (holding that § 1359 prevents federal courts from exercising diversity jurisdiction in cases in which parties have been collusively joined, regardless of whether diversity was based on parties being citizens of different states or alienage jurisdiction); Ambrosia Coal & Constr. Co. v. Pages Morales, 482 F.3d 1309, 1314–16 (11th Cir. 2007) (discussing the application of § 1359 in the context of transfers or assignments of claims and holding there is no presumption of collusion in determining whether diversity jurisdiction was manufactured in violation of the statute); Pacheco De Perez v. AT&T Co., 139 F.3d 1368, 1381 (11th Cir. 1998), *cert. granted sub nom.* AT&T Corp. Sigala, 549 S.E.2d 373 (Ga. 2001), *superseded by statute*, GA. CODE ANN. § 9-10-31.1 (2005), *as stated in* Hewett v. Raytheon Aircraft Co., 614 S.E.2d 875 (2005) (holding that fraudulent joinder of defendants could not be used to defeat diversity jurisdiction).

321. FED. R. CIV. P. 23.

322. *See* 28 U.S.C. § 1332(d).

exercise diversity jurisdiction in class actions.[323] Many of the rules regarding diversity jurisdiction are different for class actions than for other diversity cases; and thus, it is important to look closely at the provisions in § 1332(d).[324] Furthermore, in many circumstances, case law decided prior to passage of CAFA,[325] which revised the requirements for diversity jurisdiction in class actions, may no longer be good law.[326] CAFA sets out specific requirements for federal diversity jurisdiction in two types of cases: Class actions and certain mass actions that qualify as class actions.[327] The following subsections analyze the requirements for diversity jurisdiction in class action and mass action lawsuits post-CAFA.[328]

A. *Class Actions versus Mass Actions*

As stated above, CAFA applies to class actions and certain mass actions.[329] A class action is defined as "any civil action filed under rule 23 of the [FRCP] or similar State statute or rule of judicial procedure."[330] The statute defines a mass action as "any civil action . . . in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact."[331] For the most part, CAFA applies the same diversity jurisdiction rules to mass actions as class actions, going so far as to define a mass action as a class action for purposes of diversity jurisdiction,[332] except for specific circumstances analyzed in the following subsections.[333] The Eleventh Circuit has observed that, "CAFA's mass action provisions present an opaque, baroque maze of interlocking cross-references that defy easy interpretation."[334]

323. *See id.*
324. *Id.*
325. Class Action Fairness Act of 2005, Pub. L. No. 109–2, § 4, 119 Stat. 4, 4 (2005) (codified as amended at 28 U.S.C. §§ 1332(d), 1453, 1711–1715 (2012)).
326. *Id.*
327. *See* Mississippi *ex rel.* Hood v. AU Optronics Corp., No. 12-1036, slip op. at 2 (U.S. Jan. 14, 2014).
328. *See infra* Parts A–C.
329. *See* Class Action Fairness Act of 2005, Pub. L. 109-2 § 4, 119 Stat. at 9.
330. 28 U.S.C. § 1332(d)(1)(B) (2012).
331. *Id.* § 1332(d)(11)(B)(i).
332. *See id.* § 1332(d)(11)(A) ("a mass action shall be deemed to be a class action removable under [§ 1332(d)(2)-(10)] if it otherwise meets the provisions of those paragraphs"); Lowery v. Ala. Power Co., 483 F.3d 1184, 1199–1201 (11th Cir. 2007).
333. *See infra* Parts B–C.
334. *Lowery*, 483 F.3d at 1198.

B. *Amount-in-Controversy Requirements*

As explained further below, CAFA sets out different amount-in-controversy requirements depending on whether the lawsuit is a class action or a mass action.[335]

1. Amount-in-Controversy Requirements for Class Actions

Class actions have a different amount-in-controversy requirement than other cases brought pursuant to 28 U.S.C. § 1332.[336] Under CAFA, a class action brought pursuant to the federal court's diversity jurisdiction must exceed the value of five million dollars excluding costs and interests.[337] The statute explicitly states that each individual member's claims will be aggregated to determine the amount in controversy.[338] The statute does not require any individual class action plaintiff to assert a claim exceeding seventy-five thousand dollars.[339] Although CAFA's legislative history suggests Congress's intent that courts resolve doubts about the amount in controversy in favor of finding jurisdiction, the Eleventh Circuit has rejected that approach.[340] Instead, the court has held that doubts regarding amount in controversy should be resolved in favor of remanding the class action to the state court.[341]

Applying the same rule that applies in other diversity cases that are removed to federal court, when the plaintiffs in a class action have not pleaded a specific amount of damages, the removed defendant is required to prove that the amount in controversy meets the statutory minimum by a preponderance of the evidence.[342] In those circumstances, the district court looks to the face

335. *Compare* 28 U.S.C. §§ 1332(d)(2) and (6) (setting out amount-in-controversy requirements for class actions) *with* 28 U.S.C. § 1332(d)(11)(B)(i) (setting out specific requirements for mass actions that qualify as class actions under the statute).

336. *Compare* the requirements set forth in 28 U.S.C. § 1332(a) *with* those set forth in 28 U.S.C. § 1332(d)(2).

337. *See* 28 U.S.C. § 1332(d)(2).

338. *Id.* § 1332(d)(6). Prior to CAFA, class action plaintiffs were only allowed to aggregate their claims in limited circumstances. *See*, *e.g.*, Friedman v. N.Y. Life Ins. Co., 410 F.3d 1350, 1353–54 (11th Cir. 2005).

339. Cappuccitti v. DirecTV, Inc., 623 F.3d 1118, 1122 (11th Cir. 2010) (per curiam).

340. *See generally* Miedema v. Maytag Corp., 450 F.3d 1322, 1327–30 (11th Cir. 2006) (discussing the legislative history of CAFA).

341. *Id.* at 1329–30.

342. *Id.* at 1330 (citing Williams v. Best Buy Co., 269 F.3d 1316, 1319 (11th Cir. 2001)); *see also* Pretka v. Kolter City Plaza II, Inc., 608 F.3d 744, 752 (11th Cir. 2010), *aff'd*, 550 F. App'x 830 (11th Cir. 2013).

of the complaint, and, "[i]f the jurisdictional amount is not facially apparent from the complaint, the court [looks] to the notice of removal and may require evidence relevant to the amount in controversy at the time the case was removed."[343] A defendant's conclusory allegation in the notice of removal, stating that the jurisdictional amount has been met, is insufficient to satisfy CAFA's amount in controversy requirement.[344] In applying this rule, the Eleventh Circuit has held that a defendant's bare assertions that the amount in controversy in one case was similar to that in other cases that the federal court had jurisdiction over, without specific factual details, affidavits, or other evidence to support those assertions, was insufficient to establish the court's diversity jurisdiction in CAFA cases.[345] In contrast, the federal court may consider a defendant's own affidavits, declarations, and other evidence in inferring that the jurisdictional minimum has been met.[346]

The Eleventh Circuit has also applied the same standard for determining the amount in controversy when class action plaintiffs seek injunctive or declarative relief as the court does for other types of diversity cases.[347] Thus, in *South Florida Wellness, Inc. v. Allstate Insurance Co.*,[348] the court determined that "the value of declaratory relief is 'the monetary value of the benefit that would flow to the plaintiff if the [relief he is seeking] were granted.'"[349] In the case of a class action, the federal court should therefore "aggregate the claims of individual class members and consider the monetary [benefit] that would flow to the entire class if declaratory relief were granted."[350]

Furthermore, in class actions in which a class has not yet been certified, a named plaintiff cannot stipulate that the class will not seek damages in excess of five million dollars in an attempt to avoid removal to federal court.[351] In *Standard Fire Insurance Co. v. Knowles*,[352] the Supreme

343. *Miedema*, 450 F.3d at 1330 (quoting *Williams*, 269 F.3d at 1319); *see also* S. Fla. Wellness, Inc. v. Allstate Ins. Co., 745 F.3d 1312, 1315 (11th Cir. 2014) ("What counts is the amount in controversy at the time of removal."). Like other removal cases, the calculation of the amount in controversy in CAFA removal cases is based upon the time of removal. *See Pretka*, 608 F.3d at 751.

344. *Pretka*, 608 F.3d at 752 (citing *Williams*, 269 F.3d at 1320).

345. *See* Lowery v. Ala. Power Co., 483 F.3d 1184, 1189, 1210–11, 1220–21 (11th Cir. 2007); *Pretka*, 608 F.3d at 752–54 (discussing the court's reasoning in *Lowery*).

346. *Pretka*, 608 F.3d at 755.

347. *See S. Fla. Wellness, Inc.*, 745 F.3d at 1315–16; *supra* Part 111.D.3.

348. 745 F.3d 1312 (11th Cir. 2014).

349. *Id.* at 1316 (quoting Morrison v. Allstate Indem. Co., 228 F.3d 1255, 1268 (11th Cir. 2000)).

350. *Id.*

351. Standard Fire Ins. Co. v. Knowles, No. 11-1450, slip op. at 1 (U.S. Mar. 19, 2013).

352. No. 11-1450, slip op. (U.S. Mar. 19, 2013).

Court explained that such a stipulation was ineffective "because a plaintiff who files a proposed class action cannot legally bind members of the proposed class before the class is certified."[353] The Supreme Court observed that this rule is different from non-class action diversity cases, where the plaintiff has the ability to legally bind himself through his stipulations.[354]

2. Amount in Controversy Requirements for Mass Actions

Title 28, Section 1332 or the United States Code sets out different amount-in-controversy requirements for mass actions than for class actions.[355] In addition to requiring total aggregated claims of more than five million dollars, the statute specifies that the federal court only has diversity jurisdiction over plaintiffs in mass actions whose individual claims satisfy the $75,000 amount in controversy requirement provided for in 28 U.S.C. § 1332(a).[356]

C. *Diversity Requirements under CAFA*

1. Basic Requirements for Diversity

Under CAFA, complete diversity of citizenship is not required.[357] Instead, the statute only requires minimal diversity for both class actions and mass actions.[358] CAFA's diversity requirements can be met in the following three specific circumstances:

353. *Id.* at 4.

354. *Id.* at 7.

355. *Compare* 28 U.S.C. § 1332(d)(2)(A)–(C) (2012) (setting out amount in controversy requirements for class actions), *with* § 1332(d)(11)(B)(i) (stating that the federal court only has diversity jurisdiction over mass action plaintiffs who meet the amount in controversy requirements set out in 28 U.S.C. § 1332(a)).

356. 28 U.S.C. §§ 1332(a), (d)(11)(B)(i). The Eleventh Circuit considered this requirement in *Lowery*, but did not ultimately determine how the $75,000 amount in controversy requirement fit within the five million dollar amount in controversy requirement because the court determined that the defendant did not demonstrate that the removed action met the five million dollar minimum. *See id.* § 1332(d)(2); Lowery v. Ala. Power Co., 483 F.3d 1184, 1221 (11th Cir. 2007).

357. *See* 28 U.S.C. § 1332(d)(2)(A)–(C).

358. *See id.*; Mississippi *ex rel.* Hood v. AU Optronics Corp., No. 12-1036, slip op. at 2 (U.S. Jan. 14, 2014). Prior to CAFA's effective date, the Supreme Court interpreted § 1332(a) to require that each named plaintiff in a class action be diverse from each defendant, but that standard was replaced by CAFA's minimal diversity standard. *Lowery*, 483 F.3d at 1193 n.24 (citing Snyder v. Harris, 394 U.S. 332, 340 (1969) and Supreme Tribe of Ben-Hur v. Cauble, 255 U.S. 356, 365 (1921)).

> (A) any member of a class of plaintiffs is a citizen of a [s]tate different from any defendant;
>
> (B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a [s]tate; or
>
> (C) any member of a class of plaintiffs is a citizen of a [s]tate and any defendant is a foreign state or a citizen or subject of a foreign state.[359]

A class action also requires a minimum of one hundred plaintiffs, including named and unnamed class members.[360] In contrast, a mass action requires a minimum of one hundred named plaintiffs.[361] In *Mississippi ex rel. Hood v. AU Optronics Corp.*,[362] the Supreme Court of the United States specifically rejected the argument that the numerosity requirement for mass action diversity jurisdiction could be met when a state filed suit as a sole plaintiff based upon injuries suffered by the state's citizens.[363] Moreover, the Eleventh Circuit has held that a defendant may not attempt to combine two separate cases under the mass action provision by arguing that the cases involved common questions of law and fact, when the plaintiffs of those suits did not seek to consolidate their claims and each case, when considered separately, did not meet the numerosity requirements for federal diversity jurisdiction over mass actions.[364]

2. Federal Court's Discretionary Authority to Decline to Exercise Diversity Jurisdiction Over Some Class Actions

There are certain circumstances when the district court *may* decline to exercise diversity jurisdiction in class action cases even when minimal diversity exists.[365] This discretionary authority exists in cases where more than one-third, but less than two-thirds, of the proposed class members—as well as the primary defendants—are citizens of the state in which the action has been filed.[366] The statute directs the district court to consider the

359. Class Action Fairness Act of 2005, Pub. L. No. 109-2, § 4, 119 Stat. 4, 9 (2005) (codified as amended at 28 U.S.C. §§ 1332(d), 1453, 1711–15 (2012)).

360. 28 U.S.C. § 1332(d)(5)(B); *see also id.* § 1332 (d)(1)(D).

361. *See AU Optronics Corp.*, No. 12-1036, slip op. at 5 (interpreting the requirements set out in 28 U.S.C. § 1332(d)(11)(B)(i)).

362. No. 12-1036, slip op. (U.S. Jan. 14, 2014).

363. *See id.* at 1.

364. *See* Scimone v. Carnival Corp., 720 F.3d 876, 881–82 (11th Cir. 2013).

365. *See* 28 U.S.C. § 1332(d)(3).

366. *Id.*

following factors in determining whether to decline to exercise diversity jurisdiction in these circumstances:

> (A) whether the claims asserted involve matters of national or interstate interest;
>
> (B) whether the claims asserted will be governed by laws of the [s]tate in which the action was originally filed or by the laws of other [s]tates;
>
> (C) whether the class action has been pleaded in a manner that seeks to avoid [f]ederal jurisdiction;
>
> (D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;
>
> (E) whether the number of citizens of the [s]tate in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other [s]tate, and the citizenship of the other members of the proposed class is dispersed among a substantial number of [s]tates; and
>
> (F) whether, during the [three]-year period preceding the filing of that class action, [one] or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.[367]

3. Federal Court Must Decline to Exercise Diversity Jurisdiction over Class Actions in Certain Circumstances

Title 28 § 1332 of the United States Code also sets out certain circumstances when the district court must decline to exercise diversity jurisdiction in class action cases, even when the minimal diversity requirements in § 1332(d)(2) have been met.[368] Specifically, the district court will not exercise diversity jurisdiction over the following class actions:

> (A)(i) . . . a class action in which—
>
> (I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the [s]tate in which the action was originally filed;
>
> (II) at least [one] defendant is a defendant—

367. *Id.* § 1332(d)(3)(A)–(F).
368. *See id.* § 1332(d)(4).

> (aa) from whom significant relief is sought by members of the plaintiff class;
>
> (bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and
>
> (cc) who is a citizen of the [s]tate in which the action was originally filed; and
>
> (III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the [s]tate in which the action was originally filed; and
>
> (ii) during the [three]-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons.[369]

The Eleventh Circuit refers to this provision as the "local controversy" exception.[370]

The Eleventh Circuit has noted that CAFA's legislative history indicated "Congress intended the local controversy exception to be a narrow one, with all doubts resolved 'in favor of exercising jurisdiction over the case.'"[371] The party seeking to keep the class action out of federal court has the burden of demonstrating that CAFA's local controversy exception applies.[372] With respect to the first prong, the Eleventh Circuit has noted that plaintiffs' designation of particular classes may make it difficult for the plaintiffs to demonstrate that more than two-thirds of the plaintiff class were citizens of a particular state, but that difficulty did not excuse them from the local controversy exception's requirements.[373]

The court has also provided some guidance regarding the second prong, known as the "significant defendant" prong.[374] In *Evans v. Walter Industries, Inc.*,[375] the Eleventh Circuit determined that the non-diverse defendant was not a significant defendant because: (1) the plaintiffs did not demonstrate that the defendant was significantly liable for the damages alleged by the plaintiffs, in comparison to seventeen other co-defendants;

---

369. *Id.* § 1332(d)(4)(A)(i)–(ii).

370. Evans v. Walter Indus., Inc., 449 F.3d 1159, 1161 (11th Cir. 2006).

371. *Id.* at 1163 (quoting S. Rep. No. 109-14, at 42 (2005)).

372. *Id.* at 1164 (stating that "when a party seeks to avail itself of an express statutory exception to federal jurisdiction granted under CAFA, . . . we hold that the party seeking remand bears the burden of proof with regard to that exception").

373. *Id.* at 1166.

374. *See id.* at 1166–68.

375. 449 F.3d 1159 (11th Cir. 2006).

(2) the plaintiffs did not demonstrate that the defendant played a significant role in the underlying actions that caused the plaintiffs' damages; and (3) the facts showed that the defendant's actions were primarily limited to a small part of the time period and geographical location at issue in the case.[376]

The district court should also not exercise diversity jurisdiction over class actions when at least two-thirds of the proposed class members, as well as the defendants, are citizens of the State in which the action has been filed.[377]

4. Statutory Limitations on a Federal Court's Exercise of Diversity Jurisdiction in Mass Action Removal Cases

Although district courts may exercise diversity jurisdiction over certain mass actions removed from state court, the statute provides additional limitations for jurisdiction in that context.[378] Specifically, § 1332(d)(11)(B) specifically bars the federal courts' exercise of diversity jurisdiction in mass action removal cases under the following circumstances:

> (I) all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;
>
> (II) the claims are joined upon motion of a defendant;
>
> (III) all of the claims in the action are asserted on behalf of the general public—and not on behalf of individual claimants or members of a purported class—pursuant to a [s]tate statute specifically authorizing such action[379]; or
>
> (IV) the claims have been consolidated or coordinated solely for pretrial proceedings.[380]

Aside from these requirements, the same rules that apply to class actions originating in federal court also apply to removal cases.[381]

---

376. *Id.* at 1167–68 (stating that "plaintiffs' evidence offers no insight into whether U.S. Pipe played a significant role in the alleged contamination, as opposed to a lesser role, or even a minimal role. The evidence does not indicate that a significant number or percentage of putative class members may have claims against U.S. Pipe, or indeed that any plaintiff has such a claim.").

377. 28 U.S.C. § 1332(d)(4)(B) (2012).

378. *See id.* § 1332(d)(11).

379. *Id.* § 1332(d)(11)(B). The Supreme Court has referred to this provision as the "general public exception." *See* Mississippi *ex rel.* Hood v. AU Optronics Corp., No.12-1036, slip op. at 4 (U.S. Jan. 14, 2014).

380. 28 U.S.C. § 1332(d)(11)(B)(ii)(I)–(IV).

381. *See id.* § 1332(d)(11)(A).

5. The Defendant Has the Burden of Demonstrating that Diversity Jurisdiction Exists in Removal Cases.

Although CAFA's legislative history suggests that Congress intended the plaintiff to bear the burden of demonstrating that diversity jurisdiction exists in removal cases, the statute is silent as to that issue.[382] As a result, the Eleventh Circuit has held that "CAFA does not change the traditional rule that the party seeking to remove the case to federal court bears the burden of establishing federal jurisdiction."[383]

6. Timing of Citizenship Determination in Class Actions

The statute directs the federal court to base citizenship determinations as of the date on which the complaint is filed.[384] If the original complaint did not meet federal subject matter jurisdictional requirements, the district court should base citizenship determinations as of the date on which an amended complaint is filed, if the amended complaint then adequately pleads federal subject matter jurisdiction.[385]

7. Other Special Diversity Rules in Class Action and Mass Action Cases

a. *Only Named Parties Considered for Diversity Purposes*

It is a long-standing rule that the federal court ordinarily considers, for purposes of diversity jurisdiction, only the citizenship of the named parties.[386]

b. *Citizenship of Unincorporated Associations*

Unincorporated associations are treated differently in class actions than they are in other diversity cases.[387] "For purposes of [a class action], an

382. *See id.* § 1332(d); S. REP. NO. 109-14, at 42 (2005).

383. Lowery v. Ala. Power Co., 483 F.3d 1184, 1208 (11th Cir. 2007) (quoting Evans v. Walter Indus., Inc., 449 F.3d 1159, 1164 (11th Cir. 2006)).

384. 28 U.S.C. § 1332(d)(7).

385. *Id.*

386. *See* Day v. Persels & Assocs., 729 F.3d 1309, 1319 (11th Cir. 2013); Kerney v. Fort Griffin Fandangle Ass'n, 624 F.2d 717, 720 (5th Cir. 1980).

> [T]he rule that absent class members are not parties for the purpose of diversity jurisdiction "is . . . justified by the goals of class action litigation" because "[e]ase of administration of class actions would be compromised by having to consider the citizenship of all class members" and "considering all class members for these purposes would destroy diversity in almost all class actions.

Day, 729 F.3d at 1319 (quoting Devlin v. Scardelletti, 536 U.S. 1, 10 (2002)).

387. *See* 28 U.S.C. § 1332(d)(10).

unincorporated association [is] deemed to be a citizen of the [s]tate where it has its principal place of business and the [s]tate under whose laws it is organized."[388]

VI. APPELLATE CONSIDERATIONS FOR CASES INVOLVING DIVERSITY JURISDICTION ISSUES

A. *Standard of Review*

Because jurisdictional questions are questions of law, appellate courts review de novo whether the federal court has diversity jurisdiction in a civil action.[389] The court also applies a de novo standard to the review of the district court's denial of a motion to dismiss for lack of subject matter jurisdiction under FRCP 12(b)(1).[390] However, the Eleventh Circuit reviews a district court's jurisdictional factual findings regarding the parties' citizenship for clear error.[391]

B. *Adequacy of Diversity Allegations*

When the pleadings were inadequate for the court to assess whether diversity jurisdiction existed, the Eleventh Circuit has "issued a jurisdictional question asking the parties whether the allegations of citizenship were deficient and, if so, whether amendment of the complaint was necessary."[392] After determining that the plaintiff's "allegations of citizenship were *fatally deficient*," the court remanded the case to the district court for jurisdictional findings.[393]

388. *Id.*

389. *See* Triggs v. John Crump Toyota, Inc., 154 F.3d 1284, 1287 (11th Cir. 1998).

390. FED. R. CIV. P. 12(b)(1) (amended 2007); Underwriters at Lloyd's v. Osting-Schwinn, 613 F.3d 1079, 1085 (11th Cir. 2010).

391. *See* Travaglio v. Am. Express Co., 735 F.3d 1266, 1269 (11th Cir. 2013); *Osting-Schwinn*, 613 F.3d at 1085.

392. *Travaglio*, 735 F.3d at 1267–68; *see also* Williams v. Best Buy Co., 269 F.3d 1316, 1319 (11th Cir. 2001) (noting that, when the court could not ascertain whether the amount in controversy in a removal case was sufficient for diversity jurisdiction, it required the parties to submit supplemental briefs on the issue).

393. *See Travaglio*, 735 F.3d at 1268.

C. *Requirement that Appellate Court Sua Sponte Consider Whether Diversity Jurisdiction Exists*

If it appears that subject matter jurisdiction is in question, the appellate court is required to sua sponte inquire into both its own jurisdiction and that of the district court whose opinion is under review.[394]

D. *Objections Based on Lack of Subject-Matter Jurisdiction Can Be Raised at Any Time*

A party can raise an objection to the federal court's subject-matter jurisdiction at any time.[395] Applying this rule, the Supreme Court has held that, even after a party loses at trial, he or she may still move for dismissal under FRCP 12(b)(1).[396]

394. Univ. of S. Ala. v. Am. Tobacco Co., 168 F.3d 405, 410 (11th Cir. 1999); *see also* Henderson v. Shinseki, No. 09-1036, slip op. at 5 (U.S. Mar. 1, 2011) (stating that "federal courts have an independent obligation to ensure that they do not exceed the scope of their jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlook or elect not to press"); Mitchell v. Maurer, 293 U.S. 237, 244 (1934).

395. *Henderson*, No. 09-1036, slip op. at 5.

396. FED. R. CIV. P. 12(b)(1), (h)(3) (amended 2007); Arbaugh v. Y & H Corp., 546 U.S. 500, 506 (2006) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.").