## Traditional Diversity

### Jurisdictional Assessment

Jurisdiction is governed by 28 U.S.C. § 1332(a): Federal courts have jurisdiction over claims where (A) there is complete diversity between the parties and (B) the matter in controversy is more than $75,000.1

### Complete Diversity

Complete diversity means that no one on one side of the "v" can be a citizen of the same state as anyone on the other side of the "v." Indispensable parties are included, and nominal parties are excluded.2

In terms of assessing an individual's or entity's citizenship, use these rules:

1. An American citizen is a citizen of the state of his or her domicile.3
2. A foreigner is not a citizen of any State.4
3. A corporation is a citizen of all states (including foreign states) that it is incorporated in and the state with its principal place of business.5 This includes **sociedades en comandita** (a type of Puerto Rican entity),6 and by extension, other foreign entities treated like a corporation under their local law (such as a plc under English law, a GmbH or AG under

## Federal Question Jurisdiction

### Jurisdictional Assessment

Jurisdiction is governed by 28 U.S.C. § 1331: Federal courts have "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."17

Generally, federal question jurisdiction exists if

1. Federal statutory or common law provides the cause of action (e.g., violation of the Securities Act) or "the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law"18 or
2. Congress has so completely preempted a particular area that it "converts an ordinary state common law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule" (such as an employer's claim under a no-strike clause of a collective bargaining agreement, or an employee's claim relating to an employee benefit plan).19

Three specific further issues:

**FAA.** The Federal Arbitration Act does not provide federal question jurisdiction.20

**SLUSA.** Claims preempted by SLUSA may be removed to federal court, where they will be dismissed. (These are state-law-based private

## CAFA Diversity

### Jurisdictional Assessment

Jurisdiction is governed by 28 U.S.C. § 1332(d): Federal courts have jurisdiction over "class actions" where (A) there are at least one hundred putative class members, (B) at least one plaintiff is a citizen of a different state than at least one defendant, and (C) the aggregated matter in controversy is more than $5 million.23

**"Class Action"**

A "class action" is "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action."24 (Even if a class is not certified, the consensus appears to be that the court retains jurisdiction, but be aware there is a minority view to the contrary.)25

### Minimal Diversity

Unlike traditional diversity, CAFA diversity requires a showing only of minimal diversity -- someone on one side of the "v" must be a citizen of a different state than someone on the other side of the "v."26

In terms of assessing an individual's or entity's citizenship, use these rules:
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<td>German law, or a S.A. under French law.</td>
<td>putative class actions (with at least 50 members) alleging misconduct in connection with the purchase or sale of nationally traded securities, including claims that cannot be brought under federal law, if that state-law-based action alleges fraud that &quot;coincide[s]&quot; with a securities transaction, whether or not the plaintiff directly participated in that transaction.) There are several exceptions to SLUSA. Hybrid cases. Further, federal question jurisdiction can exist over a small set of &quot;hybrid&quot; cases asserting state law causes of action with embedded federal elements, but only if the action &quot;necessarily raises a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.&quot;</td>
<td>1. An American citizen is a citizen of the state of his or her domicile.</td>
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<td>A trust is a citizen of all the states that its trustees are citizens of.</td>
<td>2. A foreigner is not a citizen of any State.</td>
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<td>There is a circuit split as to whether business trusts are treated as trusts (in which case they are citizens of the states their trustees are citizens of) or as unincorporated associations (in which case they are citizens of the states that their trustees, beneficiaries, members, and shareholders are citizens of).</td>
<td>3. A corporation is a citizen of all states (including foreign states) that it is incorporated in and the state with its principal place of business. This includes sociedades en comandita (a type of Puerto Rican entity), and by extension, other foreign entities treated like a corporation under their local law (such as a plc under English law, a GmbH or AG under German law, or a S.A. under French law).</td>
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<td>An insurance company, if sued directly for a wrong done by its insured, is a citizen of (A) the state its insured is a citizen of; (B) all states (including foreign states) that it is incorporated in; and (C) the state where its principal place of business is.</td>
<td>4. A national banking association is a citizen of the state where it is headquartered.</td>
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<td>A national banking association is a citizen of the state where it is headquartered.</td>
<td>5. A trust is a citizen of all of the states that its trustees are citizens of.</td>
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<td>All other entities (including LLCs and limited partnerships) are citizens of all states that its members, owners, shareholders, or partners are citizens of.</td>
<td>6. Any other entity (potentially including business trusts in some circuits) is a citizen of the state with its principal place of business and the state under whose laws it is organized.</td>
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<td>Note that a court does not have jurisdiction if the lawsuit is between citizens of a state and a foreigner who is &quot;lawfully admitted for</td>
<td>Matter In Controversy</td>
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<td>The matter in controversy -- excluding interest and costs -- must be more than $5 million.</td>
<td>21. There are several exceptions to SLUSA.</td>
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<td><strong>Traditional Diversity</strong></td>
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<td>permanent residence&quot; and who is also domiciled in that state.¹²</td>
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<td>All putative class members' claims may be aggregated for purposes of assessing the matter in controversy.³⁵</td>
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<td>Note also that if complete diversity exists as between citizens of different U.S. states, the court still has jurisdiction even if there are foreigners as both additional plaintiffs and defendants.¹³</td>
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<td><strong>Mandatory CAFA Exceptions</strong></td>
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<td>CAFA also includes several mandatory exceptions to jurisdiction:</td>
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<td>1. If the &quot;primary defendants&quot; and at least two thirds of the proposed class are citizens of the state &quot;in which the action was originally filed.&quot;³⁶ (This is the &quot;home-state exception.&quot;)</td>
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<td>2. If the defendant from who &quot;significant relief&quot; is sought and whose conduct forms a &quot;significant basis&quot; for the claims and at least two thirds of the proposed plaintiff class are citizens of the state &quot;in which the action was initially filed,&quot; and, within 3 years, &quot;no other class action has been filed asserting the same or similar factual allegations against any of the defendants.&quot;³⁷ (This is the &quot;local-controversy exception.&quot;)</td>
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<td>3. If a claim solely involves covered securities, the internal affairs of a business enterprise under its home state laws, or the rights, duties and obligations created by a security.³⁸ (The two securities-related exceptions are the &quot;securities exceptions&quot; and other exception</td>
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<td><strong>Matter In Controversy</strong></td>
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<td>The matter in controversy -- excluding interest and costs -- must be more than $75,000.¹⁴</td>
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<td>In addition, claims by multiple plaintiffs are not aggregated for purposes of assessing the matter in controversy.¹⁵</td>
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<td><strong>Proposed Class Actions</strong></td>
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<td>If the named plaintiff is seeking to represent a class, the court may exercise supplemental jurisdiction over absent putative class members or other named plaintiffs, even if those individuals' claims do not exceed $75,000.¹⁶</td>
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Traditional Diversity | Federal Question Jurisdiction | CAFA Diversity
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is the "corporate-governance" or "internal-affairs exceptions.")

4. If the primary defendants are state or governmental entities "against whom the district court may be foreclosed from ordering relief."\(^{39}\)

The law on these exceptions is relatively sparse.\(^{40}\)

**Discretionary CAFA Exception**

There is also a discretionary exception to CAFA jurisdiction: if between one-third and two-thirds of the class members and the primary defendants are citizens of the state in which the action was originally filed, the court is to consider six factors and decide in the interest of justice if it wishes to exercise jurisdiction.\(^{41}\) To date, most courts that have concluded that the discretion exception applies have declined jurisdiction.\(^{42}\)
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<td><strong>If you have concluded that traditional diversity jurisdiction exists, the following rules govern removal:</strong></td>
<td><strong>If you have concluded that federal question jurisdiction exists, the following rules govern removal:</strong></td>
<td><strong>If you have concluded that CAFA diversity jurisdiction exists, the following rules govern removal:</strong></td>
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<td><strong>Rules Governing Removal If Asserting Traditional Diversity Jurisdiction</strong></td>
<td><strong>Rules Governing Removal If Asserting Federal Question Jurisdiction</strong></td>
<td><strong>Rules Governing Removal If Asserting CAFA Diversity Jurisdiction</strong></td>
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<td>Disregard defendants sued under fictitious names in determining citizenship of the parties.</td>
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<td>The case can only be removed if none of the defendants is a citizen of the state in which the suit is brought.</td>
<td>The case can be removed even if one or more of the defendants is a citizen of the state in which the suit is brought.</td>
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If the initial pleading sets forth the basis for federal jurisdiction, then the notice of removal must be filed within 30 days of receiving the pleading or summons by service. A defendant has 30 days from receipt or service on that defendant to file the notice of removal, even if that defendant is served later than other defendants.

If the case as stated by the initial pleading is not removable, a defendant may remove (through filing a notice of removal) within 30 days of receiving "an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable."
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<td>In addition to the 30 day period after notice (described above), the case cannot be removed more than one year after it was commenced. This is a hard rule, and it applies regardless of when a defendant first received notice that the case could be removed. (For example, if a defendant first receives notice that the case is removable after the case has been pending for 350 days, instead of the normal 30 days to remove, the defendant only has 15 days to remove before the first year is up.) The exception is if the court concludes that the plaintiff acted in bad faith to prevent removal. If the complaint demands a specific sum in good faith, that is the matter in controversy unless the complaint seeks non-monetary relief or state practice does not limit recovery of damages to the amount demanded in the complaint. If the complaint seeks non-monetary relief or state practice allows recovery in excess of what is demanded in the complaint, the notice of removal may assert the matter in controversy. The defendant, as the removing party, then has the burden of proving by a preponderance of the evidence that the matter in controversy asserted in the notice of removal exceeds $75,000.</td>
<td>There is no hard deadline for removal; a defendant can remove within 30 days of first receiving notice that the case is removable, regardless of how long the case has been pending before the defendant received notice.</td>
<td>The statutory language is unclear if there is a hard deadline for removal. The U.S. Supreme Court held in March 2013 that plaintiffs cannot stipulate that the matter in controversy is $5 million or less. The 9th Circuit has subsequently held that regardless what is pleaded a defendant's burden of proof on the matter of controversy is preponderance of the evidence, but some circuits have yet to address the issue. It is an open issue if a defendant must submit its evidence with the notice of removal, or if the notice of removal itself is sufficient until challenged by a plaintiff; this is an issue that the U.S. Supreme Court will be resolving.</td>
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### Traditional Diversity

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<td>Other defendants must consent to removal, and they may do so even if their 30-day window for filing a notice of removal has expired.</td>
<td>Other defendants are not required to consent to removal.</td>
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#### Mechanics Of Removing A Case

1. Identify the court: it is the "district court of the United States for the district and division within which such action is pending."

2. File a notice of removal "containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon" you with the appropriate federal court. Some district courts impose additional requirements on the content of notices of removal; for example, the Southern District of New York requires certain recitations about the parties' citizenship.

3. After filing the notice of removal with the federal court, give notice to the other side and the state court that you filed the notice of removal, typically through a document attaching the notice of removal.

4. Comply with any additional steps imposed by the district court the case is being removed to. For example, the District of Massachusetts requires you to file "certified or attested" copies of everything in the state-court proceeding within 28 days of removal, and, if that is not done, the clerk is to remand the action.

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1 See 28 U.S.C. § 1332(a).

2 See Wilson v. Oswego Twp., 151 U.S. 56, 66 (1894); Navarro Sav. Ass'n v. Lee, 446 U.S. 458, 461 (1980). Once indispensable parties have been added, they can be aligned as either plaintiffs or defendants depending on the substance of the action. The alignment is "a practical not a mechanical determination and is resolved by the pleadings and the nature of the dispute." Smith v. Sperling, 354 U.S. 91, 97 (1957). In addition, there is no duty on the part of the defendant to negate the existence of potential other defendants whose presence in the action would destroy diversity. See Lincoln Prop. Co. v. Roche, 546 U.S. 81, 84 (2005).


5 28 U.S.C. § 1332(c)(1). A corporation's principal place of business is the "nerve center’... where a corporation's officers direct, control, and coordinate the corporation's activities." Hertz Corp. v. Friend, 130 S. Ct. 1181, 1192 (2010). There is a circuit split about how to treat dissolved or inactive corporations; the Third and Eleventh Circuits hold that dissolved corporations have no principal places of business; the Second Circuit looks to where the dissolved corporation last conducted business; the Fourth and Fifth Circuits use a flexible facts and circumstances test; and the Seventh Circuit's approach depends on how the former state of incorporation treats dissolved corporations. See, e.g., Holston Invs. Inc. B.V.I. v. LanLogistics Corp., 677 F.3d

See Navarro Sav. Ass'n v. Lee, 446 U.S. 458, 462-65 (1980). When deciding whether to consider only the citizenship of the trustees of a Massachusetts business trust, or to also consider the citizenship of the trust's beneficial shareholders in a breach of contract case, the Supreme Court held that "a trustee is a real party to the controversy for purposes of diversity jurisdiction when he possesses certain customary powers to hold, manage, and dispose of assets for the benefit of others." Id. at 464. While the Sixth, Seventh, Ninth and Tenth Circuits rely on Navarro to hold that a trust's citizenship is determined by the citizenship of the trustees, other circuits look to the citizenship of trust shareholders, or to the citizenship of both shareholders and trustees, when the trust is suing or sued in its own name. 13F Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 3630.1 (3d ed. 2009). This is a complicated area, and further research should be conducted.


See Vaden v. Discover Bank, 129 S. Ct. 1262, 1271 (2009) (The Federal Arbitration Act "is something of an anomaly in the realm of federal legislation: It bestow[s] no federal jurisdiction but rather require[s] [for access to a federal forum] an independent jurisdictional basis over the parties’ dispute" (internal quotation marks and citations omitted; alterations in original)). But see 9 U.S.C. § 203 (providing federal question jurisdiction if FAA is used in connection with an internal arbitration agreement subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards).

See Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit, 547 U.S. 71, 83-84 (2006). In Dabit a former broker filed a class action based on state law, and alleged fraudulent manipulation of stock prices, causing both brokers and clients to retain, or delay selling, overvalued securities. The Court held that SLUSA broadly precludes state-law class claims brought by holders of securities, as well as purchasers and sellers, because the deception is still related to the purchase or sale of securities. Id. at 89. "The requisite showing . . . is 'deception 'in connection with the purchase or sale of any security,' not deception of an identifiable purchaser or seller." Id. at 85. In addition, the U.S. Supreme Court has determined that the distinction between purchasers/sellers versus holders irrelevant because "the identity of the plaintiffs does not determine whether the complaint alleges fraud 'in connection with the purchase or sale' of securities." Id. at 89. See also, e.g., Romano v. Kazacos, 609 F.3d 512, 521-22 (2d Cir. 2010) (equating the "in connection with" standard in SLUSA with situations in which plaintiff's claims "necessarily allege," "necessarily involve," or "rest on" the purchase or sale of securities, and finding the "coincide" standard easily satisfied when the "induced" standard is met); 15 U.S.C. § 78bb(f)(1)-(2).

Grable, 545 U.S at 319-20 (2005) (finding federal question jurisdiction because "[g]iven the absence of threatening structural consequences and the clear interest the Government, its buyers, and its delinquents have in the availability of a federal forum, there is no good reason to shirk from federal jurisdiction"); Empire HealthChoice Assurance, Inc. v. McVeigh, 547 U.S. 677, 700 (2006) (denying federal question jurisdiction because the issue was not triggered by federal agency action, is "fact-bound and situation-specific," and the federal government interest in the action does not warrant turning the tort case into a "discrete and costly" federal case).


27 See Sun Printing, 194 U.S. at 383. "Domicile" is where the person resides with the intent to remain indefinitely. See, e.g., Heinen, 671 F.3d at 670.


29 U.S.C. § 1332(c)(1). A corporation's principal place of business is the "nerve center... where a corporation's officers direct, control, and coordinate the corporation's activities." Hertz Corp., 130 S. Ct. at 1192. There is a circuit split about how to treat dissolved or inactive corporations; the Third and Eleventh Circuits hold that dissolved corporations have no principal places of business; the Second Circuit looks to where the dissolved corporation last conducted business; the Fourth and Fifth Circuits use a flexible facts and circumstances test; and the Seventh Circuit's approach depends on how the former state of incorporation treats dissolved corporations. See, e.g., Holston Invs., 677 F.3d at 1070-71; Colon, 2010 WL 46523, at *3.
See, e.g., Russell & Co., 288 U.S. at 480-81.


See, e.g., Navarro, 446 U.S. at 462-65. But further research should be conducted.

28 U.S.C. § 1332(d)(10); see also, e.g., Erie Ins. Exch. v. Erie Indem. Co., 722 F.3d 154, 161 n.7 (3d Cir. 2013); Ferrell v. Express Check Advance of SC LLC, 591 F.3d 698, 699 (4th Cir. 2010); Davis v. HSBC Bank N.A., 557 F.3d 1026, 1032 & n.13 (9th Cir. 2009). Note that Congress contemplates that unincorporated associations (e.g., a LLC) are organized in only one state, unlike corporations, which Congress contemplates may be incorporated in multiple states. Compare id. (unincorporated associations), with 28 U.S.C. § 1332(c)(1) (corporations). In addition, it does not appear that any courts have addressed the citizenship of business trusts in the context of CAFA diversity jurisdiction, but the author surmises that circuits that follow Carden and treat business trusts as unincorporated associations for purposes of traditional diversity jurisdiction would likely then apply 28 U.S.C. § 1332(d)(10) for CAFA diversity purposes; and the circuits that treat business trusts as trusts for purposes of traditional diversity jurisdiction would likely not apply 28 U.S.C. § 1332(d)(10).


28 U.S.C. § 1332(d)(9). These exceptions are evolving, and should be researched thoroughly.


See Elias et al., "Welcome To The Jungle: CAFA Exceptions," at 183.


28 U.S.C. § 1446(c)(2)(A). Practitioners have read this provision, coupled with the 1988 amendments to the removal statute, as removing any requirement that evidence be submitted with the notice of removal in support of the assertion of federal subject-matter jurisdiction.


28 U.S.C. § 1446(c)(1) only applies to removal "on the basis of jurisdiction conferred by section 1332."

The conflict is this: 28 U.S.C. § 1446(c)(1) states that "[a] case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action," which would bar removing a case on the basis of CAFA jurisdiction after a year. However, 28 U.S.C. § 1453(b) states that "[a] class action may be removed . . . in accordance with section 1446 (except that the 1-year limitation under section 1446(c)(1) shall not apply," and any case removed on the basis of CAFA jurisdiction is a "class action," which would therefore fall under section 1453(b). It is possible that this conflict is simply a drafter's error, especially since elsewhere in section 1446(c) Congress has taken care to refer to "jurisdiction conferred by section 1332(a)," as opposed to "jurisdiction conferred by section 1332." Compare 28 U.S.C. § 1446(c)(1), with, e.g., 28 U.S.C. § 1446(c)(2). (The version of the Federal Courts Jurisdiction & Venue Clarification Act of 2011 that initially passed the House of Representatives states "jurisdiction conferred by section 1332(a)"; but that language changed to "jurisdiction conferred by section 1332" when passing the Senate.) In any event, care should be taken.


Rodriguez v. AT&T Mobility Servs., LLC, 728 F.3d 975, 981 (9th Cir. 2013).

Frederico v. Home Depot, 507 F.3d 188, 196-97 (3d Cir. 2007); Lowery, 483 F.3d at 1208.


28 U.S.C. § 1446(a). A useful guide in this context is 28 U.S.C. §§ 81-131, which set out the district and divisions for each district court. For example, Massachusetts has a single district and division (see 28 U.S.C. § 101), whereas Illinois has three districts (Northern, Central, and Southern), and the Northern District of Illinois in turn has two divisions (see 28 U.S.C. § 93).


S.D.N.Y. L. Civ. R. 81.1 (requiring notices of removal on diversity grounds to set forth, inter alia, dates of service on all parties and citizenship of all parties).


D. Mass. L.R. 81.1 (requiring "certified or attested copies" of the state court records, proceedings, and docket entries to be filed with the federal court within 28 days of filing of the notice of removal, and mandating that the clerk remand the case if this is not done within 42 days of the filing of the notice of removal).