

Hypothetical – Personal Jurisdiction; Rule 15; Subject-Matter Jurisdiction

Plain v. Apple et al.

Patricia Plain is a junior in college who currently lives and goes to school in Spokane, Washington (which is in the eastern part of the state and about 10 miles from the border with Idaho). She relies a lot on her electronic devices to keep herself organized. Before she left to go to college in Spokane a few years ago, she lived with her parents in San Jose, California. Recently, she married her high-school sweetheart in San Jose. While she was taking her honeymoon in Paris, France, she went to an Apple retail store to purchase a new iPhone. Even though her parents' home was less than an hour's drive from Apple's headquarters in Cupertino, California,¹ and she could have bought a phone there before departing, she bought her phone in France because the exchange rate was favorable, and it was less expensive than if she had purchased it in California. Otherwise, her new phone is identical to the iPhones sold in Apple retail stores in the United States.

Many Apple stores are located inside shopping malls, but Apple has built several stand-alone "flagship" stores in major cities such as Paris, Seattle, and Portland. The iPhone itself is manufactured globally. For example, its much-touted Face ID sensor was imagined in Florida, but manufactured in Asia by Taiwanese giant TMSC. And as most people know, many iPhones are assembled in China. Apple sells its products worldwide.

Plain brought her new iPhone with her back to Spokane and started experimenting with the Siri function of the phone. Siri is an acronym for Speech Interpretation and Recognition Interface, and is a computer program that Apple markets extensively as an intelligent personal assistant and knowledge navigator. The feature uses a natural language user interface to answer questions, make recommendations, and perform actions by delegating requests to a set of Web services. The technologies underlying Siri, including the mapping and navigation features, were developed collaboratively by many different U.S. companies and research universities. Apple touts these features extensively. An example of its nationwide marketing is a Siri commercial broadcast on television and via YouTube, which features a young man who asks Siri, "What is the traffic like here?" while he's driving a car. Apple spends millions of dollars each year on ads like this.

Not long after returning to Spokane, and while in an unfamiliar part of town, Plain realized that she needed toothpaste but didn't know where the nearest drug store was located. While driving her car, and without having to look down at her phone, Plain said, "Hey Siri, how do I get to the nearest pharmacy?" Siri responded with "Getting directions to FarmaSee" and then gave Plain driving directions. Instead of directing her to a drugstore, however, the directions took Plain to a dairy farm and petting zoo ten miles away in Idaho. Because Plain was not paying much attention, she did not realize that she had just crossed the border into Idaho. When Plain realized the mistake, she turned to go back home to Washington state. Unfortunately, before she could make her way out of the farm, a large truck driven by one of the dairy farm employees, Bobby Bleeker, hit her car and totaled it.

¹ Apple Inc. is incorporated in California.

Fortunately, Plain escaped with minor injuries, but the accident caused her to miss the first week of classes of her junior year and left her shaken for several months afterwards.

FarmaSee is a local organic dairy business located in Idaho and incorporated there. It belongs to a dairy cooperative that provides dairy products to retailers based primarily in Idaho. Although the dairy cooperative has repeatedly tried to sell more broadly, organizations such as the Washington Dairy Federation have been mostly successful at keeping non-Washington dairy out of its state. FarmaSee also advertises on an Interstate 90 billboard in Idaho, just on the other side of the Washington border, that visitors are welcome to see the cows, learn about a working farm, and play with the kittens in the barns, all for free. Unlike the Apple flagship stores in Paris, Seattle, or Portland, FarmaSee does not get thousands of visitors a week, but it does get some out of towners, many of whom are traveling on Interstate 90 on their way from the west coast to destinations elsewhere. While the farm does not keep a precise log of its visitors, it does have a guest book that visitors are welcome to sign. Over the last ten years, some of those visitors have indicated that they are from Washington. There is a small gift store in the barn that is open only during the December holiday season to sell fresh-cut trees. Because of its rural location and low pay, FarmaSee is not able to attract employees easily. Bobby Bleeker was a recent hire who has struggled most of his life with a substance abuse problem. Unfortunately, he was probably intoxicated when he hit Plain's car. Bleeker lived on the dairy farm at the time of the accident, but was previously homeless and without a fixed address.

Plain is planning to sue Apple, claiming Siri doesn't work as well in real life as it does in the company's commercials. Plain would also like to sue FarmaSee and Bleeker for negligence (leading to the injuries to her and her car). Her counsel, Erin Brockovitch, has drafted a complaint with three counts. In Count I of her complaint, Plain alleges that Bleeker was negligent by driving while intoxicated, and in Count II, she alleges that FarmaSee was negligent in hiring and supervising Bleeker. Both theories are based on common-law negligence under state law. In Count III, against Apple only, Plain alleges that the iPhone was defectively designed because of the incorrect driving directions provided by Siri, which ultimately led to the automobile collision with Bleeker. This latter claim is a products-liability claim based on state law. Plain has requested \$100,000 in compensatory damages against all the defendants. Against Apple she has additionally requested \$250,000 in punitive damages.

Question 1

Assume for purposes of this question that Plain's lawyer Brockovitch is trying to decide whether it would be appropriate to file the complaint in the U.S. District Court for the Eastern District of Washington, where Spokane sits. She is particularly concerned about whether the court would have personal jurisdiction over all three defendants: Apple, FarmaSee, and Bleeker. Please advise Brockovitch whether the U.S. District Court would have personal jurisdiction over the three defendants. Assume a state long-arm statute in Washington permits courts to reach as far as due process allows.

Question 2

Assume for purposes of this question and the following question that Plain's lawyer Brockovitch ultimately filed a timely complaint on August 1, 2023 on behalf of Plain in the U.S. District Court for the District of Idaho, against three defendants—Apple, FarmaSee, and Bleeker—and that the complaint contained the same counts as those in the draft complaint described in the main fact pattern. Assume also that all defendants were properly served with process on August 1, 2023. In the jurisdictional paragraph of the complaint, she alleged that the federal court has original jurisdiction sounding in diversity because the plaintiff is a citizen of Washington state, and the defendants are citizens of California, Idaho, and Idaho, respectively. Brockovitch arranged for service of process upon the defendants in full conformity with Rule 4 of the Federal Rules of Civil Procedure. The case was assigned to U.S. District Judge Lotta Wisdom. None of the defendants objected in any way to the Court's jurisdiction. Apple answered the complaint. FarmaSee and Bleeker are jointly represented by the lawyer Carol Cristen who filed an answer on their behalf. Discovery ensued pursuant to Judge Wisdom's scheduling order.

Brockovitch prepared interrogatories and sent them to Cristen to forward to FarmaSee for its review and responses. Among the interrogatories and FarmaSee's answers were the following:

1. State whether you have received any information of an injury sustained by the plaintiff. If so, state when and from whom you first received notice of such injury.

A: FarmaSee was first notified of this alleged injury when the complaint was forwarded to us on or before September 1, 2023. The complaint was forwarded to FarmaSee by our lawyer.

2. State whether you have caused an investigation to be made of the circumstances of said injury.

A: FarmaSee made a brief investigation in September 2023, and then turned the matter back over to our lawyer for further investigation.

At a deposition of FarmaSee's employees, scheduled about a month after Brockovitch received these interrogatory answers, and two weeks after the Idaho statute of limitations for negligence expired, Brockovitch first learned that FarmaSee had been sold to an agribusiness, Dargill, Inc. The sale to Dargill had taken place the year before Plain's accident on the farm. Dargill had not gotten around to changing the signs on the FarmaSee farm and was still operating it as a local dairy business until it could start a multi-state dairy farming operation, scheduled to open in 2024.

Realizing that a possible error was made, Brockovitch wants to file a motion on December 10, 2023, to amend the complaint to name Dargill as one of the negligent defendants, either in addition to or in place of FarmaSee, and for the amended complaint to relate back in time to the original complaint. You are now the legal extern for Brockovitch's law firm. Analyze the issues raised in the motion. Do not discuss joinder or jurisdiction issues.

Question 3

Assume for purposes of this question that, correctly or incorrectly, Judge Wisdom allowed Plain to file an amended complaint that related back in time to the original complaint, and that Plain filed a first-amended complaint that added Dargill to the lawsuit and raised the same claims against Dargill that were also made against FarmaSee, which continued to be named in the lawsuit. Dargill promptly answered with an affirmative defense of comparative negligence, meaning that Plain's own negligence should reduce any recovery. Discovery continued. Apple's lawyers deposed Plain. During this deposition, Plain volunteered that though, before the lawsuit was filed, she had always seen herself returning to California after graduation, she no longer felt that way. It was now her hope to stay in Washington.

Another deposition was that of defendant Bleeker. During his deposition, Brockovitch asked Bleeker for further information regarding his citizenship. Bleeker responded that he had been a homeless person living in Seattle in a homeless encampment until about a month before the alleged injury to Plain. He had been working for FarmaSee on a temporary basis, placed there by a Seattle non-profit, Off the Streets, which is dedicated to finding employment for people living on the streets. After the accident and before the lawsuit was filed, Bleeker returned to Washington state because he did not find being on a farm to his liking. Based on this new information, Dargill sought and received permission to file a third-party complaint against Off the Streets for contribution.

Finally, Brockovitch learns through interrogatories to Dargill that Dargill is incorporated in Delaware with some of its offices in Idaho and others located in Washington. Many of its employees telecommute from remote locations and some (but not all) of its officers live in either California or Washington.

Brockovitch is concerned because she would like Plain's lawsuit to remain in federal court. She wants you to analyze and advise on what might happen if any party raised the issue of subject-matter jurisdiction and what could be done in response.