

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

MAURICE and PENNY GIFFORD,)	
husband and wife,)	
)	
Plaintiffs,)	
)	
vs.)	No. CIV-09-228-FHS
)	
HEWLETT-PACKARD COMPANY,)	
)	
Defendants.)	

ORDER AND OPINION

Before the court for its consideration is the Defendant's Motion and Brief to Dismiss or in the Alternative, Transfer. In this motion, the defendant requests the court to enter an order dismissing this action pursuant to Federal Rule of Civil Procedure 12 (b)(7), because plaintiffs failed to join their insurer Allstate, who is a required party under Federal Rule of Civil Procedure 19. In the alternative, defendant requests this court to transfer this case to the United States District Court for the Western District of Oklahoma so that it can be consolidated with another case. Plaintiffs filed a response stating that they agreed Allstate was a necessary party but objected to the transfer of the case to the United States District Court for the Western District of Oklahoma. Plaintiffs request that the case from the United States District Court for the Western District of Oklahoma be consolidated with this case in this court.

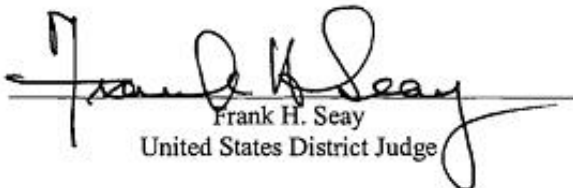
The court finds the facts as follows. Plaintiffs filed the instant case on May 29, 2009, in Cherokee County, Oklahoma which was removed by defendant to the United States District Court for the Eastern District of Oklahoma, on June 12, 2009. In this lawsuit, plaintiffs allege that on May 29, 2007, a notebook

computer manufactured by defendant Hewlett-Packard Company caught fire, damaging their home. Plaintiffs seek damages for the loss of their home, personal property, living expenses, financial burden, emotional trauma and anguish resulting from the loss of their home, loss of income, attorney fees and punitive damages.

At the time of the fire, Allstate Property & Casualty Insurance Company, provided homeowners insurance to the plaintiffs. As a result of the fire, Allstate paid the plaintiffs over \$170,000.00 to repair their home, and paid for living expenses and damage to personal property. Allstate filed a subrogation suit on May 21, 2009, in Oklahoma County, Oklahoma. Allstate seeks to be reimbursed to the extent of payments made to plaintiffs, which did not include the plaintiffs' \$1,000.00 deductible or any damage sustained by plaintiffs that was not covered under the policy. That action was removed to the United States District Court for the Western District of Oklahoma on June 9, 2009.

Pursuant to 28 U.S.C. Sec. 1391, venue is proper in both the United States District Court for the Eastern District of Oklahoma and the United States District Court for the Western District of Oklahoma. The court has considered all the factors set forth in 28 U.S.C. Sec. 1404 (a) to determine if a change of venue is appropriate. All factors appear even to support venue in either court. As a result, since the lawsuit in the United States District Court for the Western District of Oklahoma was initiated first, the court finds that it is appropriate to transfer this case to the United States District Court for the Western District of Oklahoma. Since the court is granting the Motion to Transfer, it will not rule on the Motion to Dismiss filed by defendant.

IT IS SO ORDERED this 16th day of December, 2009


Frank H. Seay
United States District Judge