

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

FRANK BERNABE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-12-290-D
	)	
GARRISON PROPERTY AND	)	
CASUALTY COMPANY,	)	
	)	
Defendant.	)	

**ORDER**

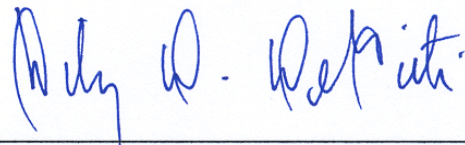
Before the Court is Non-Party Oklahoma Insurance Department's Motion to Quash Subpoena [Doc. No. 1], presumably filed pursuant to Fed. R. Civ. P. 45(c)(3). The party opposing the Motion, Plaintiff Frank Bernabe, has responded in opposition to it [Doc. No. 3], and has filed a separate Request for Expedited Hearing [Doc. No. 4], due to an imminent discovery deadline in the underlying litigation, which is pending in the Northern District of Oklahoma as Case No. 11-CV-0408-CVE-FHM. Upon consideration of these filings, the Court finds, in the exercise of its discretion under Rule 45, that this matter should be transferred to the Northern District of Oklahoma for disposition in concert with the underlying case.

In *Peterson v. Douglas County Bank & Trust Co.*, 940 F.2d 1389, 1391 (10th Cir. 1991), the court of appeals held that, although Rule 45 authorizes the court from which a subpoena was issued to resolve objections to it, the issuing court is not prohibited by Rule 45 from transferring a motion to quash the subpoena to the district in which the underlying

litigation is pending. While Rule 45 has been amended since *Peterson* was decided, the amendments do not affect its holding. Accordingly, district courts in this circuit have concluded that “it is within the discretion of the court that issued the subpoena to transfer motions involving the subpoena to the district in which the action is pending.” *Goodyear Tire & Rubber Co. v. Kirk’s Tire & Auto Servicenter of Haverstraw, Inc.* 211 F.R.D. 658, 660 (D. Kan. 2003) (citing *Peterson*); accord *Mona Vie, Inc. v. Amway Corp.*, No. 08-cv-02464-WDM-KLM, 2009 WL 524938 (D. Colo. March 2, 2009). The Court finds that such a transfer is appropriate here, due to a potential impact on the case schedule imposed by the presiding judge, Chief Judge Claire V. Eagan, and the unfamiliarity of this Court with the substantive issues in the case.

IT IS THEREFORE ORDERED that the Motion to Quash Subpoena [Doc. No. 1] is TRANSFERRED to the United States District Court for the Northern District of Oklahoma.

IT IS SO ORDERED this 11<sup>th</sup> day of April, 2012.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE