

case to the United States District Court for the Middle District of Pennsylvania,² and the

occurred in the Eastern District of Pennsylvania. See Brief in Support of Defendants' Motion to Dismiss for Improper Venue (“Defendants' Brief”) at 4. The plaintiffs respond that a substantial part of the events or omissions giving rise to the claim occurred in the Eastern District because: (1) negotiations between the parties occurred while the plaintiff, Allan J. Nowicki, was in the Eastern District; (2) an amended contract was accepted and signed by Nowicki in the Eastern District; and (3) the defendants failed to make payments to the Nowickis in the Eastern District. See Plaintiffs' Brief in Opposition to Motion to Change Venue (“Plaintiffs' Opp.”) at 5.

The plaintiffs have met their burden of demonstrating that venue is proper in the Eastern District of Pennsylvania. The plaintiffs' cause of action involves the alleged breach of two separate agreements, the original contract, which was signed by the parties in October, 1998, and an amended agreement. The amended agreement was signed, and thereby executed, by Nowicki in January, 1998, at Nowicki's home address, which is located within the Eastern District of Pennsylvania. See id. This is a significant event giving rise to the plaintiffs' cause of action. See *BABN Techs. Corp. v. Bruno*, 25 F. Supp. 2d 593, 598 (E.D. Pa. 1998) (finding that venue was proper in Pennsylvania because, inter alia, the agreement at issue was executed in Pennsylvania).

The plaintiffs also allege that the parties negotiated the original contract and the amended agreement via telephone while Nowicki was located at his residence in the Eastern District. See Plaintiffs' Opp. at 5. These negotiations are also substantial events for the purpose of assessing venue. See *Bowdoin*, 1999 WL 391486, at *5 (finding a substantial part of events or omissions giving rise to plaintiff's claim occurred in the Eastern District because, among other things, the parties communicated via telephone while one party was located in the Eastern District); see also *Figgie Int'l*, 925 F. Supp. at 412-13 (considering fact that plaintiff's base of operations for negotiation of contract was within district as significant event for purpose of determining proper venue).

Finally, the plaintiffs allege that a substantial part of the “events or omissions” giving rise to this case occurred in this District because the defendants were supposed to send payments to an address within the Eastern District, and the defendants failed to do so. See Plaintiffs' Opp. at 2, 5. The court does not agree with the plaintiffs that this is an event or omission that occurred within the Eastern District of Pennsylvania. Rather, this was an omission that actually occurred in New York when the defendants allegedly failed to remit the payments as required by the agreement. See *Cottman*, 36 F.3d at 295 (holding that failure by defendant in Michigan to “return various materials and remit payments” to plaintiff in Pennsylvania was an omission that occurred in Michigan, not in Pennsylvania, “even though the result was [plaintiff's] non-receipt of those items in Pennsylvania”).

Nonetheless, because the amended agreement, which is at the heart of the plaintiffs' cause of action, was executed within this district, and because negotiations leading to this agreement and the original contract also allegedly occurred at least partially within this district, this court finds that venue is proper in the Eastern District of Pennsylvania. Accordingly, this court denies the defendants' motion to dismiss the plaintiffs' complaint for improper venue.

²In the alternative, the defendants request that this court transfer this case to the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1406(a). See Defendants' Brief at 5. Section

plaintiffs' response thereto, IT IS HEREBY ORDERED that the motion is DENIED.

William H. Yohn, Jr., J.

1406(a) of Title 28 of the United States Codes permits a district court of a district in which a case has been improperly filed to “transfer such case to any district or division in which it could have been brought” if it is in the interest of justice to do so. See 28 U.S.C. § 1406(a). Because venue is proper in the Eastern District of Pennsylvania, section 1406(a) is inapplicable and the defendants' motion to transfer is denied.