

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

JEANIE ZAPOROWSKI,)	
)	
Plaintiff,)	8:11CV205
)	
v.)	
)	
CITY OF OMAHA, et al.,)	MEMORANDUM AND ORDER
)	
Defendants.)	
_____)	

This matter is before the Court on plaintiff's motion for protective order (Filing No. [20](#)) and accompanying index of evidence (Filing No. [21](#)). Defendants seek to compel plaintiff's attendance at a deposition in Omaha, Nebraska, scheduled for September 26, 2011. Plaintiff (Zaporowski) lives in Arizona. Zaporowski has presented defendants with medical evidence in the form of a letter from John N. Glover, M.D., stating that Zaporowski's "pulmonary conditions do not permit her to travel at this time" (Ex. 2, Filing No. [21](#)).

"Ordinarily, plaintiff will be required to make himself or herself available for examination in the district in which suit was brought. Since plaintiff has selected the forum, he or she will not be heard to complain about having to appear there for a deposition." 8A Charles Alan Wright et al., *Federal Practice and Procedure* § 2112 (3d ed. 2010). "At best, however, this is a general rule which is subject to exception, when the plaintiff can make a compelling showing that its application would impose an unduly heavy burden" *Archer Daniels Midland Co. v. Aon Risk Services, Inc.*, 187 F.R.D. 578 (D.Minn.

1999). "It is well settled that the district court has great discretion in designating the location of taking a deposition" *Thompson v. Sun Oil Co.*, 523 F.2d 647 (8th Cir. 1975).

The Court finds that Zaporowski has made a "compelling showing" as to "the unduly heavy burden" imposed by attending the deposition in Omaha. Accordingly,

IT IS ORDERED:

- 1) Plaintiff's motion for protective order is granted.
- 2) Defendants' request that Zaporowski pay defendants' counsel's costs is denied.

DATED this 22nd day of September, 2011.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court