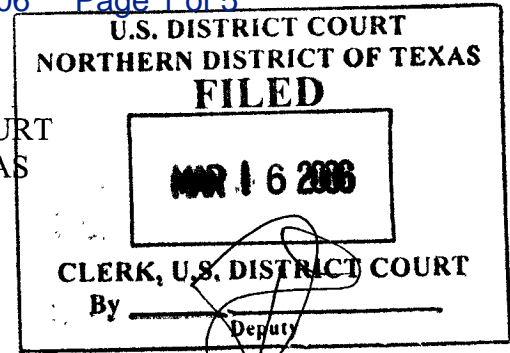


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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



MICHAEL J. QUILLING, RECEIVER FOR  
SARDAUKAR HOLDINGS, IBC and  
BRADLEY C. STARK,

Plaintiff,

v.

HANS TSCHEBAUM and MICHAEL  
TSCHEBAUM,

Defendants.

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Civil Action No. 3:05-CV-1465-L

(Jury Trial Demanded)

**PLAINTIFF'S RESPONSE TO DEFENDANTS'  
OBJECTION AND MOTION FOR PROTECTIVE ORDER**

TO THE HONORABLE PAUL D. STICKNEY, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling, Receiver for Sardaukar Holdings, IBC and Bradley C. Stark, ("Plaintiff") and submits this Response to *Defendants' Objection, Motion for Protective Order and Brief in Support Regarding Plaintiff's Notices of Depositions of Hans Tschebaum and Michael Tschebaum* [Dkt. 18] ("Motion for Protective Order" or "Defendants' Motion"), and would show unto the Court as follows:

**I. INTRODUCTION**

While Rule 26 of the Federal Rules of Civil Procedure give District Courts the ability to protect parties from certain discovery requests, there is no compelling reason to protect these Defendants from traveling to the Northern District of Texas. Defendants are simply attempting to shift travel expenses to the Receivership Estate, which ultimately reduces the recovery of each and every defrauded investor. As explained more fully below, the articulated policy of Congress and the comparative hardships compel the Defendants to appear here in the Northern District of Texas and participate in discovery.

## II. ARGUMENTS AND AUTHORITIES

### A.

#### **Federal Law and the Articulated Policy of Congress Anticipate that Activity Related to this Case Will Occur in the Northern District of Texas.**

The same statutes requiring Defendants to defend this action in the Northern District of Texas anticipate that they will bear the burden of traveling here to attend necessary case activity. The United States District Court for the Northern District of Texas appointed the Receiver in this case and charged him with the duty to pursue Receivership Estate assets located throughout the country. To that end, 28 U.S.C. § 754 and § 1692 give this Court extended jurisdiction over Defendants possessing Receivership Estate assets as if they were located wholly within the Northern District of Texas. *See* 28 U.S.C. § 1692. These statutes clearly reflect Congressional policy requiring that all disputes relating to Receivership Estate assets be managed in one district for the sake of efficiency. *See Quilling v. Grand Street Trust*, 2005 WL 1983879, \*4 (W.D.N.C. Aug. 12, 2005); *Terry v. June*, 2003 WL 22125300, \*5 (W.D. Va. Sept. 12, 2003); *citing In re AES Corp. Sec. Litig.*, 240 F.Supp.2d 557, 561 (E.D. Va. 2003).

It is important for the Court to keep in mind that this is only one of seven ancillary cases that the Receiver is currently pursuing on behalf of this Receivership Estate and more are anticipated in the immediate future. Motions like this one undermine the very purpose of maintaining all case activity in one forum and would have the Receiver traveling constantly to conduct discovery—all at the Receivership Estate's expense. Accordingly, this Court should join other Courts in acknowledging that some inconvenience to out-of-state defendants is a necessary trade-off resulting from the Congressional policy behind statutes like § 754 and § 1692. *See, e.g., Quilling*, 2005 WL 1983879 at \*4 (“although the Defendants may be inconvenienced by litigating this matter in North Carolina, such inconvenience is not so extreme as to justify thwarting the congressionally articulated

policy that allows for extraterritorial jurisdiction in receivership cases”); *Terry*, 2003 WL 22125300 at \*5 (upholding expanded jurisdiction in ancillary receivership case although out-of-state resident “will thus undoubtedly face some level of inconvenience” in defending himself there).

Defendants’ Motion also misconstrues the applicable law regarding the respective burden on parties conducting discovery. Defendants cite *Work v. Bier*, 107 F.R.D. 789, 792 n.4 (D.D.C. 1985), for the proposition that plaintiffs should generally travel to the defendants’ location when conducting discovery. That ruling, however, extended a Fifth Circuit decision beyond its original holding and the dicta in that case does not accurately reflect Fifth Circuit law. *See Id.*, citing *Salter v. The Upjohn Company*, 593 F.2d 649, 651 (5th Cir.1979) (holding that corporate officers should be deposed in the location of the corporation regardless of whether they are plaintiffs or defendants); *see also Reed v. Binder*, 165 F.R.D. 424, 427 (D. N.J. 1996) (describing the language cited in *Work* as “dicta”). The fact is, this Court exercises discretion in resolving disputes relating to the time and place of discovery. For the sake of efficiency and in light of the respective hardships (examined more fully below) this Court should not protect Defendants from traveling to the Northern District of Texas.

#### **B.**

#### **Balancing the Hardships Does Not Favor the Defendants.**

In their Motion for Protective Order, Defendants raise curious arguments under the banner of “undue burden and/or expense.” *See Motion for Protective Order* at 2. For example, Defendants object to “unnecessarily” traveling 1,400 miles for a deposition. *Id.* It is certain, however, that one side or the other will have to travel that distance for these depositions. Defendants give no compelling reason why they should be protected from traveling to the very District overseeing this dispute. Rather, they would delay scheduling a deposition until the Receiver has an additional reason

to be in the Los Angeles area. This is not a workable solution. The Receiver has no more trips planned to California, much less to Los Angeles, and the Discovery deadline could very well pass before another trip presents itself.

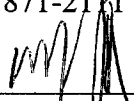
Furthermore, the burden and expense of traveling to the Northern District of Texas cannot be described as “undue” because Congress clearly intended Defendants to travel here when it gave this Court expanded jurisdiction over them by operation of 28 U.S.C. § 752 and § 1692. *See Motion for Protective Order* at 2. To the contrary, any burden faced by California residents traveling to Texas are more accurately described as “necessary,” “proper,” or “anticipated” in light of federal statutes requiring them to do so.

Finally, Defendants’ appeal to equity and justice is misguided. *Id.* The real injustice would be passing additional travel expenses on to the defrauded investors rather than the Defendants who wrongfully possess assets of the Receivership Estate. It is the Defendants who refuse to relinquish at least \$475,912.71 of unearned funds that, according to bank records, represents the principal deposits of defrauded investors and are fraudulent transfers as a matter of law. *S.E.C. v. Cook*, 2001 WL 256172, \*3 (N.D. Tex. Mar. 8, 2001); *see also Warfield v. Byron*, 2006 WL 118250, \*6-7 (5th Cir. Jan. 17, 2006) (disgorging commissions skimmed from investor payments into a *Ponzi* scheme); *In re Alpha Telecom, Inc.*, 2004 WL 3142555, \*4 (D. Or. Aug. 18, 2004) (disgorging commissions for selling securities for a *Ponzi* scheme). Defendants cannot legitimately claim that the balance of hardships weighs in their favor and, therefore, their Motion for Protective Order should be denied.

Respectfully submitted,

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By: \_\_\_\_\_

  
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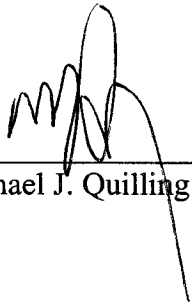
ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of March, 2006, the foregoing *Response to Defendants' Objection and Motion for Protective Order* was served upon the following parties via First Class Mail, postage pre-paid:

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