

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

DIANA BRAAKSMA, individually,
and as parent, natural guardian, and
next best friend of JONATHAN DUSTIN
BRAAKSMA

PLAINTIFFS

v.

Case No. 3:09-cv-48-DPM

UNION PACIFIC RAILROAD COMPANY

DEFENDANT

ORDER

Having exercised its discretion in light of the governing precedent, the Court grants Plaintiffs' motion to voluntarily dismiss their case without prejudice on a condition. Fed. R. Civ. P. 41(a)(2) & (d); *Paulucci v. City of Dulth*, 826 F.2d 780, 782–83 (8th Cir. 1987); *Kern v. TXO Production Corp.*, 738 F.2d 968, 970–73 (8th Cir. 1984). Because the case has proceeded so far, the dismissal is conditioned on Plaintiffs paying Defendant (within thirty days of any refiling) any Rule of Civil Procedure 54(d) costs and any attorney's fees incurred in this case that will be sunk and lost by the nonsuit. Most of Defendant's costs and attorney's fees, of course, will not be lost – the answer,

the mutual discovery, and the motion papers can all be recycled if Plaintiffs refile. *Kern*, 738 F.2d at 972-73.

The parties should confer and try to stipulate to Defendant's lost costs and attorney's fees. If they cannot agree by 30 September 2010, then Defendant should certify and file a list of what it believes to be its reasonable lost costs and fees; Plaintiffs should respond as soon as possible; the Court will enter a further order after considering the details.

So Ordered.



D.P. Marshall Jr.
United States District Judge

13 September 2010