

2005, Defendants submitted an application for discovery in response to Plaintiffs' motion to dismiss. Essentially, Defendants wanted Magistrate Judge Falk to condition Plaintiffs' dismissal on the Defendants' being able to engage in limited discovery because Defendants alleged Plaintiffs acted in bad faith and were "recidivist walk-away litigant[s]." Initially, Judge Falk allowed for some limited discovery on the issue of this "recidivism." The parties disputed the extent of the discovery. In an on-the-record conference call with the Court on December 20, 2005, Defendants requested further discovery and attorneys' fees as a condition of the Plaintiffs' voluntary dismissal.

As a general matter, "courts have followed the principle that dismissal should be allowed unless the defendant will suffer some plain legal prejudice other than the mere prospect of a second law suit." U.S. ex. rel. Haskins v. Omega Institute, Inc., 11 F.Supp. 2d 555, 570 (D.N.J. 1998). To cure any potential prejudice, the district court has discretion under Fed. R. Civ. P. 41(a)(2) to condition the Plaintiffs' dismissal "upon such terms and conditions as the court deems proper," such as "reimbursement of costs and attorneys' fees to defendants." Young v. Johnson & Johnson, 2005 WL 2886218, at *7 (E.D.Pa. 2005). When a plaintiff moves for voluntary dismissal with prejudice, "it has been held that the district court must grant that request." Spring City Corp. v. American Buildings Co., 1999 WL 1212201, at

* 1 (E.D.Pa. 1999) (citing Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure, § 2367 (1995)) (emphasis added). Furthermore, where the plaintiff voluntarily dismisses the case with prejudice, the district court may only award attorneys' fees where "exceptional circumstances call for their allowance in order to do justice between the parties....where they are specifically authorized by statute or provided for by agreement between the parties." Smoot v. Fox, 353 F.2d 830, 832 (6th Cir. 1965).

This is not a case where attorneys' fees are authorized by statute. Moreover, there are neither "exceptional circumstances" nor a private agreement between the parties. Therefore, Defendants' request for attorneys' fees and for further discovery in this matter, as a condition of dismissal, is overly broad and without legal support.

Accordingly, **IT IS** on this 27th day of December, 2005,

ORDERED that Plaintiffs' motion for voluntary dismissal of the complaint with prejudice under Fed. R. Civ. P. 41(a)(2) is granted; and it is further

ORDERED that this dismissal is without costs, fees, or any further terms or conditions.

\s\ John C. Lifland, U.S.D.J.