

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>PEGGY MORGAN BENDER,</b>	:	
<b>ADMINISTRATRIX OF THE ESTATE</b>	:	
<b>OF DEJURNITTE BENDER,</b>	:	
<b>Plaintiff,</b>	:	
	:	
<b>vs.</b>	:	<b>CIVIL ACTION 09-0735-KD-M</b>
	:	
<b>MAZDA MOTOR CORPORATION, et al.,</b>	:	
<b>Defendants.</b>	:	

**ORDER**

After due and proper consideration of all pleadings in this file, and a *de novo* determination of those portions of the Recommendation to which objection is made, the Recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) and dated January 26, 2010 is **ADOPTED** as the opinion of this Court. Accordingly, it is **ORDERED** that Plaintiff's Motion to Remand (Doc. 6) be **GRANTED** and that this action is hereby **REMANDED** to the Wilcox County Circuit Court for all further proceedings.

It is further **ORDERED** that Defendants' Motion to stay or certify for interlocutory appeal pursuant to 28 U.S.C. § 1292(b) (Doc. 17) is **DENIED**. A motion to remand that is granted for lack of subject matter jurisdiction cannot be certified for interlocutory appeal under 28 U.S.C. § 1447(d). In re WTC Disaster Site, 414 F.3d 352, 367 (2<sup>nd</sup> Cir. 2005) (concluding that § 1292(b) appeals are encompassed by the § 1447(d) prohibition); In re Bear River Drainage District, 267 F.2d 849, 851 (10<sup>th</sup> Cir. 1959) (footnote omitted) (providing that "[a]n order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise. [ ] While the generality of § 1292(b) might seem sufficient to encompass a remand order, it does not expressly either amend or

repeal § 1447(d)[']”); Ray v. American Nat. Red Cross, 921 F.2d 324, 326 (D.C. Cir. 1990); Feidt v. Owens Corning Fiberglass Corp., 153 F.3d 124, 126-127 (3<sup>rd</sup> Cir. 1998) (holding that the Court of Appeals lacked jurisdiction under 28 U.S.C. § 1447(d) to hear an § 1292(b) interlocutory appeal from the order granting the motion to remand); Transit Cas. Co. v. Certain Underwriters at Lloyd’s of London, 119 F.3d 619, 623 (8<sup>th</sup> Cir. 1997) (finding an order remanding a case to state court for lack of subject matter jurisdiction is not reviewable).

**DONE and ORDERED** this the **18<sup>th</sup>** day of **February 2010**.

/s/ Kristi K. DuBose

**KRISTI K. DUBOSE**

**UNITED STATES DISTRICT JUDGE**