

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

ROSHAUNDA JACKSON, ET AL.

CIVIL ACTION NO. 3:12-00581-SDD-SCR

VERSUS

JUDGE SHELLY D. DICK

SYGENTA CROP PROTECTION, LLC, ET AL. MAGISTRATE JUDGE REIDLINGER

RULING

Before the Court is *Plaintiffs' Motion to Amend Order and Stay Proceedings* (Rec. Doc. 45). Plaintiffs move the Court to certify its *Order* denying remand (Rec. Doc. 35) for an immediate interlocutory appeal pursuant to 28 U.S.C. §1292(b).

"Section 1292 (b) appeals are exceptional. They are permitted only when there is a substantial difference of opinion about a controlling question of law and the resolution of that question will materially advance, not retard, ultimate termination of the litigation."¹ The Court does not find there to be any "substantial difference of opinion" or split within the district courts of this Circuit. The allegations of the Plaintiffs' *Supplemental and Amending Petition for Damages*, and the record at the time of removal, fail to assert a legally valid claim against either non-diverse Defendants, Sanford or Graham. The Magistrate Judge correctly concluded, and this Court agrees, that Defendants, Sanford and Graham, were improperly joined because they owed no personal duty² to Plaintiff, Jackson, under *Canter v. Koehring Co.*, 283 So.2d 716 (La. 1973). The Plaintiffs have not demonstrated a substantial basis for a difference of opinion in this

¹ *Clark-Dietz and Associates-Engineers, Inc. v. Basic Construction Company*, 702 F. 2d 67, 69 (5th Cir. 1983).


² Duty is a question of law.

Circuit as to the application of *Canter*. Likewise, there is no substantial difference of opinion in this Circuit as to the application of *Smallwood v. Illinois Cent. Ry. Co.*³

Furthermore, the Court finds that granting an immediate interlocutory will not materially advance the termination of this litigation.

For these Reasons the Plaintiffs' *Motion to Amend Order and Stay Proceedings* and to have this matter certified for immediate interlocutory appeal is DENIED.

Baton Rouge, Louisiana this 23 day of July, 2013.



SHELLY D. DICK, DISTRICT JUDGE
MIDDLE DISTRICT OF LOUISIANA

³ 385 F.3d 568, 571 (5th Cir. 2004) , *en banc*.