

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**LUDWIG DISTRIBUTING
COMPANY, INC. and MCBRIDE
DISTRIBUTING COMPANY, INC.**

PLAINTIFF

v.

CASE NO. 5:10-CV-33 BSM

**PABST BREWING COMPANY,
HEINEKEN USA INC.,
CROWN IMPORTS, LLC
THE BOSTON BEER COMPANY, and
C.R. FORTUNE BEER COMPANY**

DEFENDANT

ORDER

The motions for reconsideration of Defendants Heineken USA Inc., Boston Beer Company, and Pabst Brewing Company (Doc. Nos. 11, 12) are denied.

Defendants move for reconsideration of the February 12, 2010 order remanding this case to the Circuit Court of Arkansas County, Arkansas (Doc. No. 6). In response, plaintiffs argue that 28 U.S.C. § 1447(d) bars reconsideration or appeal of a district court's order of remand. Defendants cite *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 129 S.Ct. 1862 (2009) for the proposition that the remand order can be reconsidered despite the dictates of 28 U.S.C. § 1447(d), because it is unclear whether the case was remanded for lack of subject matter jurisdiction.

Although there is some question as to whether *Carlsbad* stands for the proposition for which it is offered, there is no question that *Carlsbad* is distinguished from this case. In *Calsbad*, the Supreme Court held that the federal court of appeals had jurisdiction to review

the district court's remand where the district court declined to exercise supplemental jurisdiction over a number of state law claims. *Id.* In this case, plaintiff's claims were clearly remanded under 28 U.S.C. § 1447(c) due to the lack of diversity of the parties and, consequently, for a lack of subject matter jurisdiction. Therefore, the remand order may not be reconsidered under section 1447(d). *See Carlson v. Arrowhead Concrete Works, Inc.*, 445 F.3d 1046, 1054 (8th Cir. 2006).

Accordingly, defendants' motion for reconsideration (Docket Nos. 11, 12) is denied.

IT IS SO ORDERED this 4th day of March, 2010.


UNITED STATES DISTRICT JUDGE