

07-1437 CARLSBAD TECHNOLOGY, INC. V. HIF BIO, INC.

DECISION BELOW:508 F.3d 659

LOWER COURT CASE NUMBER: 2006-1522

QUESTIONS PRESENTED:

In *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 357 (1988), this Court held that district courts could remand removed claims upon deciding not to exercise supplemental jurisdiction under 28 U.S.C. § 1367(c). However, in *Powerex Corp. v. Reliant Energy Servs., Inc.*, 127 S. Ct. 2411, 2416 (2007), the Court stated that “it is far from clear . . . that when discretionary supplemental jurisdiction is declined the remand is not based on lack of subject-matter jurisdiction for purposes of § 1447(c) and § 1447(d)” and noted that “[w]e have never passed on whether *Cohill* remands are subject-matter jurisdictional for purposes of post-1988 versions § 1447(c) and § 1447(d).”

Construing *Powerex* as leaving the question open, the Federal Circuit held that a remand based on declining supplemental jurisdiction can be colorably characterized as a remand based on lack of subject matter jurisdiction, thus disagreeing with the nine other federal courts of appeals that have construed *Cohill* as distinguishing between remands for lack of subject matter jurisdiction and remands based on declining to exercise subject matter jurisdiction that already exists. Thus, this petition presents the question posed but left unanswered in *Powerex* that is now the subject of a direct conflict among the circuits:

1. Whether a district court’s order remanding a case to state court following its discretionary decision to decline to exercise the supplemental jurisdiction accorded to federal courts under 28 U.S.C. § 1367(c) is properly held to be a remand for a “lack of subject matter jurisdiction” under 28 U.S.C. § 1447(c) so that such remand order is barred from any appellate review by 28 U.S.C. § 1447(d).

CERT. GRANTED 10/14/2008