

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Civil Action No. 10-cv-00818-MSK

BARBARA CARRASCO; and
RUEBEN CARRASCO,

Plaintiffs,

v.

MOSES SHIEH, D.O.,

Defendant.

ORDER REMANDING CASE

THIS MATTER comes before the Court *sua sponte*.

The Plaintiffs commenced this action in the Adams County District Court. Plaintiffs allege that Defendant, in error, told Plaintiffs that Plaintiff Barbara Carrasco had breast cancer. In reliance on that information, Plaintiff Barbara Carrasco underwent a bilateral mastectomy. A later detailed review of a pathology report indicated that Plaintiff Barbara Carrasco did not have breast cancer. Plaintiffs have filed claims for professional negligence, lack of informed consent that no cancer was present and loss of consortium. In their Complaint, the Plaintiffs did not request any particular monetary relief.

In the Notice of Removal, the Defendant asserts that this Court can exercise jurisdiction based upon diversity pursuant to 28 U.S.C. § 1332. The Defendant relies primarily upon the Plaintiffs' election in the mandatory Colorado Civil Cover Sheet stating: "This party is seeking a monetary judgment for more than \$100,000 against another party, including any attorney fees, penalties or punitive damages, but excluding interest and costs[.]"

In accordance with the analysis set forth in *Baker v. Sears Holding Corp.*, 557 F. Supp. 2d 1208 (D. Colo. 2007), there has been an insufficient showing of the requisite amount in controversy to establish diversity jurisdiction. Accordingly, the action must be remanded to the State Court. *See* 28 U.S.C. § 1447(c).

IT IS THEREFORE ORDERED that this action is **REMANDED** to the Adams County District Court.

DATED this 27th day of April, 2010.

BY THE COURT:

A handwritten signature in black ink that reads "Marcia S. Krieger". The signature is written in a cursive style with a dot over the 'i' in "Krieger".

Marcia S. Krieger
United States District Judge