

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
WILLIAM FERTIK, Individually and)	
As Personal Representative and)	
Successor of the Estate of)	
GRETA FERTIK,)	
Plaintiff,)	
)	
v.)	Civil Action
)	No. 12-10795-PBS
ABBOTT VASCULAR, INC.)	
Defendants.)	
_____)	

ORDER
September 26, 2016

Saris, U.S.D.J.

Abbott Vascular, Inc. ("Abbott") has filed a motion for reconsideration of the Court's order denying its Motion for Summary Judgment based on the "now fully developed post-Daubert record." At that hearing Abbott's expert, Dr. Thomas Piemonte, testified concerning an alternative explanation for the breakage of the wire. He opined that the wire fractured because of extraordinary stresses placed on the wire during use. Specifically, according to Dr. Piemonte, the doctors advanced 39.5 centimeters of the wire outside of the needle into the left atrium of the heart. The wire then prolapsed, came into contact with the sharp needle, and sheared off during withdrawal.

After a review, I found no reference to this "shearing" argument in the extensive summary judgment briefing. Dr.

Piemonte's expert report attached to Abbott's briefs does not develop the basis for his opinion that the likely cause of the break was shearing due to the handling of the product by the physicians. Instead, the primary focus of Abbott's arguments during the summary judgment process was that the doctrine of res ipsa loquitur does not apply because the use of the wire was off label. It is too late to seek reconsideration based on expert testimony at a Daubert hearing concerning likely mishandling of the wire by the doctors. That theory could have been presented during the summary judgment proceeding. The applicability of the res ipsa loquitur argument is best resolved based on a full trial record.

/s/ Patti B. Saris
Chief U.S. District Judge