



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