

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

File No. 62-CV-10-7618  
Judge David C. Higgs

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Barbara Lamere, Trustee for the heirs and  
next-of-kin of Sergeant Major Thomas C.  
Lamere, deceased,

Plaintiff,

ORDER

vs.

St. Jude Medical Inc., and St. Jude Medical  
S.C., Inc.,

Defendants.

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This matter came before the **Honorable David C. Higgs** on December 21, 2011 on  
Defendants' Motion for Sanctions and Renewed Motion for Summary Judgment and Plaintiff's  
Motion for Continuance and to Extend the Scheduling Deadlines.

**Anthony Chu, Esq. and Andrew Davick, Esq.**, appeared for and on behalf of Plaintiff.

**Edward Fox, Esq. and Carrie Hund, Esq.**, appeared for and on behalf of Defendants.

Upon all the files, records and proceedings herein,

**IT IS HEREBY ORDERED:**

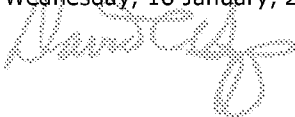
1. That Plaintiff's Motion for a Continuance and to Extend the Scheduling Deadlines is hereby **DENIED**.
2. That Defendants' Motion for Sanctions is hereby **DENIED**.
3. That Defendants' Renewed Motion for Summary Judgment is hereby **GRANTED**.
4. That the attached memorandum is incorporated herein by reference.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

**BY THE COURT:**

**Date: January 18, 2012**

E-Signed by Hon. David C. Higgs  
Wednesday, 18 January, 2012 15:10:58



**David C. Higgs  
District Court Judge**

**MEMORANDUM**

**A. SUMMARY JUDGMENT STANDARD**

Summary judgment is proper where there is no genuine issue as to any material fact. Minn. R. Civ. P. 56.03; *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996); *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). This Court's sole function is to determine "whether there is an issue of fact to be tried." *Anderson v. Twin Cities Rapid Transit Co.*, 84 N.W.2d 593, 604 (Minn. 1957). In ruling on a summary judgment motion, the court must view the evidence in the light most favorable to the non-moving party. *Henderson v. Ford Motor Co.*, 403 F.3d 1026, 1032 (8<sup>th</sup> Cir. 2005); *Grondahl v. Bullock*, 318 N.W.2d 240, 242 (Minn. 1982).

Summary judgment should be granted only when the moving party has established right to judgment with such clarity as to leave no room for doubt. *See Drager by Gutzman v. Aluminum Industries Corp.*, 495 N.W.2d 879 (Minn. App. 1993). When a motion for summary judgment is made and supported, the nonmoving party must "present specific facts showing that there is a genuine issue for trial." Minn. R. Civ. P. 56.05. In order to successfully oppose a motion for summary judgment, a party cannot rely upon mere general statements of fact but rather must demonstrate at the time the motion is made that specific facts are in existence which

create a genuine issue for trial. *Erickson v. General United Life Ins. Co.*, 256 N.W.2d 255 (Minn. 1977). Summary judgment is proper when the nonmoving party fails to provide the court with specific facts indicating that there is a genuine issue of fact. *Id.*

**B. PLAINTIFF HAS FAILED TO ASSERT A PARALLEL CLAIM**

Defendants move for Summary Judgment to dismiss Plaintiff's Amended Complaint based on failure to produce any evidence establishing a parallel manufacturing defect claim that is not preempted by federal law. (Def. Mem. in Support of Mot. Summ. J. 1).

Defendants first moved for summary judgment on October 28, 2010. On February 7, 2011, the Court dismissed all but Plaintiff's first cause of action, based on federal preemption. (Ct. Order 2, Feb. 7, 2011). At that time, the Court ruled that the claim that "Lamere's valve was damaged in the manufacturing process" survived preemption "at this early stage in the proceedings" because it created "a genuine issue of material fact as to whether Lamere's valve was in the condition intended by the PMA when it was sold, and because such a claim merely parallels the federal requirements." (Ct. Order 19). In so ruling, the Court found that the claim did not impose requirements that are "different from or in addition to" the federal requirements. The Court found that the remaining claim withstood summary judgment based on Plaintiff's argument that Defendants failed to manufacture the device in accordance with FDA specifications. (Ct. Order 12). In its Order, the Court considered the Armeniades Affidavit, in which she opined that the fracture was caused "by a manufacturing defect which occurred due to the failure to properly finish and polish the valve leaflet." (Dr. Constantine Armeniades Aff. ¶5). To the extent that defect was a violation of the FDA requirements, it was not preempted.

Defendants now renew their motion for summary judgment arguing that Plaintiff has failed to establish a parallel manufacturing defect claim which was the only grounds on which

the Court previously denied summary judgment. It is Plaintiff's burden to show that a parallel claim exists. *See Wolicki-Gables v. Arrow Intern., Inc.*, 634 F.3d 1296, 1302 (11<sup>th</sup> Cir. 2011); *Ilarraza v. Medtronic, Inc.*, 677 F.Supp.2d 582, 589 (E.D.N.Y. 2009). Plaintiff has failed to cite any federal requirement that was violated in the manufacture of Lamere's valve.

Instead, Plaintiff argues that a deviation in a manufacturing specification is not necessary under Minnesota law. (Pl. Mem. in Opp'n to Mot. Summ. J. 16). In support thereof, Plaintiff asserts that her claim can be argued on a common-law negligence or strict liability theory. *Id.* Such common-law claims are clearly preempted by the MDA. In *Riegel*, the Court dismissed claims of strict liability and negligent manufacturing insofar as it was not premised on the theory of violation of federal law. *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 322 (2008). To survive summary judgment, Plaintiff must produce evidence that Defendants violated a specific federal requirement.

Summary Judgment is appropriate on Plaintiff's remaining cause of action for failure to establish a parallel claim.

DCH