

Plaintiffs allege that the defendants were negligent in the care and treatment of Liu by failing to transfer him to an emergency room following initial receipt of elevated liver enzyme lab results, thereby diminishing his chance of survival and contributing to his death.

Several defendants moved for summary judgment based on expert testimony that the care provided to Liu was not responsible for his death because, *inter alia*, there was no available treatment for his heart disease and his overall health condition precluded a heart transplant. Plaintiffs sought to raise a triable issue as to causation by proffering a causation opinion from Dr. Jay Schapira. Dr. Schapira opined, without explanation, that had Liu been transferred to the emergency care facility sooner (when the original elevated liver enzyme readings were first received, rather than when they were confirmed) Liu would have had a greater than 50% chance of survival.

The trial court, performing the type of gatekeeping responsibility outlined by this Court in *Sargon Enters., Inc. v. USC* (2012) 55 Cal.4th 747, excluded the opinion as conclusory and granted summary judgment. The Superior Court sustained defendant's objections because "the Schapira declarations do not contain a reasoned explanation as to why any act or omission by Dr. Valencerina caused decedent's death" (9 App., Exh. 65, p. 2428) and that the "declaration of Dr. Schapira did not contain a reasoned explanation as to what treatment at an acute care hospital after the liver function test showed increasingly elevated liver enzymes would have given Liu a better than 50 percent chance of avoiding death from dilated cardiomyopathy, which defendants' expert Dr. Fowler indicated was not treatable and could not have been avoided as Liu was not a heart transplant candidate." (2013 WL 1731752 at *5 [Slip Opn., p. 11].)

The Court of Appeal for the Second Appellate District, Division Five, reversed 2-1, holding that it was error to exclude Dr. Schapira's opinion. Relying on the decision in *Garrett v. Howmedica Osteonics Corp.* (2013) 214 Cal.App.4th 173, *review denied* June 14, 2013, and rejecting the standards applied in *Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, the Court held that (1) an expert declaration opposing summary judgment is construed liberally in favor of its *admissibility* as well as its sufficiency to raise a triable issue of fact, and (2) the *Sargon* evidentiary gatekeeping obligation and standards of admissibility are materially more relaxed at the summary judgment stage than they are at trial. The Court of Appeal majority acknowledged that the defense expert witnesses who provided opinion testimony on the issue of causation gave "reasoned explanation[s]" for their conclusions on the issue of causation. (2013 WL 1731752 at *5 (Slip Opn., p. 10). The majority also acknowledged that the defense expert witness opinion testimony was not speculative or conclusory. (*Id.*) The majority recognized that the trial court then correctly focused on the opinion testimony of Dr. Schapira. (*Id.*)

The majority did not directly address the *admissibility* of Dr. Schapira's opinion on causation, but instead only considered the *sufficiency* of Dr. Schapira's causation opinion. Although the majority