



*Attacking Plaintiff's
Expert Witnesses
Sargon*

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Evidence Code 801

- **If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is:**
- **(a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and**
- **(b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion.**



Evidence Code 802

- A witness testifying in the form of an opinion may state on direct examination the reasons for his opinion and the matter (including, in the case of an expert, his special knowledge, skill, experience, training, and education) upon which it is based, unless he is precluded by law from using such reasons or matter as a basis for his opinion.
- The court in its discretion may require that a witness before testifying in the form of an opinion be first examined concerning the matter upon which his opinion is based.



Sargon Enterprises, Inc.



Manufacturer of a small dental implant



Sued University of Southern California for breach of contract for failure to conduct testing resulting in loss profits



Excluded Plaintiff's expert testimony on loss profits using the market share theory arguing this small Plaintiff company would eventually have grown into an industry leader



No factual basis to offer this opinion



**Sargon
Enterprises,
Inc. v.
University of
Southern Cal.**
(2012) 55
Cal.4th 747

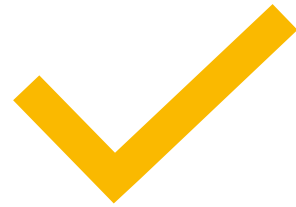
Expert conclusions must be logically supported by the materials they rely on



Keep out speculative and other improper testimony



Stay Ahead of the Game



Effective Deposition

Detailed deposition questions

Foundation: WWWWW

Two Boxes



Attack Before and After Trial

Pre Trial Motions: MIL

402 Hearing

Cross Examine

Qualifications in Presence of Jury



*Sargon Enterprises, Inc. v.
University of Southern Cal. :*

**Avoid speculative and unsupported
assumptions of fact**

Daubert v.

Merrell Dow Pharmaceuticals, Inc:

Scientific Method

**State v.
Federal**

Don't Forget *People v. Sanchez*
(2016) 63 Cal.4th 665

Hearsay v. Case Specific Hearsay

Expert cannot rely on case specific
hearsay for the truth of the matter
asserted without a permissible hearsay
exception or exemption

Example: Dr. Barbara Luna





What other ways have you successfully attacked Plaintiff's experts?

What experts have you opposed?

Luna
Lepper
Micale
Bounds

