

Ramirez v. Avon Products, Inc.
(2023) Los Angeles County Super. Ct. No. 20STCV22671 Case No. JCCP 4674

A declaration from a PMQ or corporate representative are still held to the same rules of evidence as a lay witness in assessing a declaration attached to an MSJ

FACTS/ PROCEDURE

Plaintiff and her husband brought suit against Avon alleging the talc it used to make its makeup products contained asbestos. She alleged that she used the powder daily from the mid-1970s to 2007. Avon denied that they used asbestos in its products during that time. Plaintiff set out to prove Avon talc more than likely contained asbestos. Avon brought an MSJ based on a declaration by Lisa Gallo, Avon's current vice president of Global Innovation, Research and Development. She had worked there since 1994. She was also produced as a PMQ. The declaration said she made the following statements based on either her investigation or her own personal knowledge. Then virtually all of her statement concerned activities at Avon in the 1970s and attached documents mainly from the 1970s. The declaration stated Avon has always required its talc suppliers to provide only asbestos-free talc and described an internal three-step screening and testing program to ensure the talc was asbestos free. Plaintiffs objected to her declaration and exhibits on the grounds they lacked foundation, lacked personal knowledge and contained hearsay. The trial judge granted the MSJ and overruled the objections. It held because she was offered as a corporate representative and a PMQ, it gave her a basis to provide foundational testimony based on her independent review.

2nd APPELLATE DISTRICT

Reversed. The court noted a minority of courts hold objections are under a de novo review but found an abuse of discretion standard should apply. The appellate court held the trial court abused its discretion in overruling the objections. It found there are only two types of witnesses: lay or expert. Gallo was not an expert so she was limited to testimony in her own personal knowledge and not hearsay. The court rejected the trial court's reasoning that because she was a PMQ witness that allowed her to avoid these rules of evidence. There is no such thing as a 'corporate representative' witness.

It recognized that Avon has difficulties marshalling evidence because the activities occurred 50 years ago but the plaintiff shares in those difficulties. Ultimately the plaintiff will have the burden to prove the long-ago activities actually occurred. Even assuming Gallo 'channeled' information from individuals who were around at that time, there is no indication that those sources with personal knowledge were the basis for her statements. The fact that some of the individuals she spoke with likely also did not have personal knowledge only doubled the danger of reliability and the hearsay concerns. The objections should have been sustained and the MSJ denied.