UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CONCETTA PERONE, administratrix of the estate of BENJAMIN PERONE, deceased, and CONCETTA PERONE, administratrix ad prosequendum of BENJAMIN PERONE, deceased,	:	
Plaintiff,	:	Action at Law
-vs-	:	ANSWER TO AMENDED AND SUPPLEMENTAL COMPLAINT
JOHNS MANVILLE CORPORATION, a corporation of the State of New York,	:	
Defendant.	:	

The defendant, JOHNS-MANVILLE CORPORATION, a corporation of the State of New York, having its principal office in New Jersey at Manville, Somerset County, says that:

FIRST DEFENSE TO FIRST COUNT

1. It denies Paragraph 1, except that it says that the plaintiff's intestate was in its employ at its plant in Manville, New Jersey, from December 28, 1926, to the month of November, 1928.

2. It denies Paragraph 2, except that it says that it was and has been engaged in the manufacture of asbestos products for commercial purposes from December 28, 1926, to the present time.

3. It denies Paragraph 3, except that it says that it employed the plaintiff's intestate from December 28, 1926, to the month of November, 1928.

4. It denies Paragraph 4.

5. It denies Paragraph 5.

6. It denies Paragraph 6.

7. It denies Paragraph 7.

8. It has no knowledge or information sufficient to form a belief as to the allegations of Paragraph 8.

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SECOND DEFENSE TO FIRST COUNT

The injury and the disease alleged in the complaint were due to one of the risks of his employment assumed by the plaintiff's intestate as part of the terms of his contract of employment.

THIRD DEFENSE TO FIRST COUNT

The injury and the disease alleged in the complaint were due to one of the risks of his employment assumed by the plaintiff's intestate as part of the terms of his contract of employment.

FOURTH DEFENSE TO FIRST COUNT

The injury and the disease alleged in the complaint were caused by contributory negligence on the part of the plaintiff's intestate.

FIFTH DEFENSE TO FIRST COUNT

The injury and the disease alleged in the complaint were caused by contributory negligence on the part of the plaintiff's intestate in that the plaintiff's intestate failed to exercise reasonable care to protect himself against the alleged dangers of his employment by using the mask and other appliances provided by the defendant for this purpose.

SIXTH DEFENSE TO FIRST COUNT

The injury and the disease alleged in the complaint were due to negligence on the part of a fellow-servant of the plaintiff's intestate in failing to warn and instruct the plaintiff's intestate to use the mask and other appliances provided by the defendant for the purpose of protecting the plaintiff's intestate against the alleged dangers of his employment.

SEVENTH DEFENSE TO FIRST COUNT

The action of the plaintiff was barred at the time of the death of the plaintiff's intestate because

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the original action, when commenced and instituted by the plaintiff's intestate during his lifetime, had not been commenced and instituted within two years next after the alleged cause of action accrued, and by reason of the premises the present action of the plaintiff is barred.

FIRST DEFENSE TO SECOND COUNT

1. It repeats the allegations of Paragraphs 1, 2, 3, 4, 5, 6 and 7 of the First Defense to First Count.

2. It has no knowledge or information sufficient to form a belief as to the allegations of Paragraph 2.

3. It has no knowledge or information sufficient to form a belief as to the allegations of Paragraph 3.

4. It denies the allegations of Paragraph 4 except that it has been informed and believes that this action was brought within two years after the death of the plaintiff's intestate.

5. It has no knowledge or information sufficient to form a belief as to the allegations of Paragraph 5.

SECOND DEFENSE TO SECOND COUNT

. It repeats the allegations of the Second Defense to First Count.

THIRD DEFENSE TO SECOND COUNT

It repeats the allegations of the Third Defense to First Count.

FOURTH DEFENSE TO SECOND COUNT

It repeats the allegations of the Fourth Defense to First Count.

FIFTH DEFENSE TO SECOND COUNT

It repeats the allegations of the Fifth Defense to First Count.

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SIXTH DEFENSE TO SECOND COUNT

It repeats the allegations of the Sixth Defense to First Count.

Holmes & Ellmaker

Attorneys of Defendant.

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UNITED STATES DISTRICT COURT.
FOR THE DISTRICT OF NEW JERSEY.

CONCETTA PERONE, administratrix of the estate of BENJAMIN PERONE, deceased, and CONCETTA PERONE, administratrix ad prosequendum of BENJAMIN PERONE, Plaintiff, -vs- JOHNS-MANVILLE CORPORATION, a corporation of the State of New York, Defendant.	ACTION AT LAW REPLY TO AMENDED ANSWER

The plaintiff, Concetta Perone, for reply to the defendant's answer to the Amended and Supplemental Complaint, says that:-

1. She denies all the affirmative defenses alleged in the answer of the defendant, Johns-Manville Corporation.

Samuel Greenstein
Attorney for Plaintiff.

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Perth Amboy, N. J.

UNITED STATES DISTRICT Court.

FOR DISTRICT OF NEW JERSEY.

CONCETTA PERONE, administratrix of the estate of BENJAMIN PERONE, deceased, and CONCETTA PERONE, administratrix ad prosequendum of BENJAMIN PERONE,
vs. Plaintiff,

JOHNS-MANVILLE CORPORATION, a corporation of the Stateof New York,
Defendant.

Action at law

Notice of Trial.

SIR :—PLEASE TO TAKE NOTICE, that the trial of the issue joined in this cause will be moved before said Court, in the presence of such Judge or Justice thereof, as shall then be holding said Court, on the first *Tuesday of* November *A. D. 19* 30*, at the Court House, in* 24 Commerce St. Newark *in and for the* District *of* New Jersey *at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.*

Dated July 8 *A. D. 19* 30

Samuel Greenstone
Attorney of Plaintiff.

To Hobart & Minard *Esqs.*
Attorneys of Defendant

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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Concetta Perone, Admx. &c. :

vs. : No. L-1954

Johns-Manville Corp :

NOTICE OF FIXING PLACE FOR TRIAL.

Pursuant to Rule 12 I have fixed the place for the trial of the above case at Newark, N. J.

The next term of this court to be held at Newark, N. J. will commence the First Tuesday in April next and this case having been noticed for trial pursuant to said rule will be placed on the calendar. No notice of trial for subsequent terms will be necessary.

George T. Cranmer,
Clerk

By Charles S. Chevrier,
Deputy.

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UNITED STATES DISTRICT Court.

FOR THE DIST. OF NEW JERSEY.

CONCETTA PERONE, administratrix of the estate of BENJAMIN PERONE, deceased, and CONCETTA PERONE, administratrix ad prosequendum of BENJAMIN PERONE, deceased,

Plaintiff,

vs.

JOHNS-MANVILLE CORPORATION, a corporation of the State of New York,

Defendant.

Action at law

Notice of Trial.

SIR :—PLEASE TO TAKE NOTICE, that the trial of the issue joined in this cause will be moved before said Court, in the presence of such Judge or Justice thereof, as shall then be holding said Court, on the First *Tuesday of* April *A. D. 19* 31, *at the* Lefcourte Bldg, *in* Newark *in and for the* District *of* New Jersey *at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.*

Dated January 14th *A. D., 19* 31.

Hobart & Minard

Samuel Greenstone
Attorney of Plaintiff.

To _____ *Esq.,*
Attorney of Defendant.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CONCETTA PERONE, administratrix of the estate of BENJAMIN PERONE, deceased, and CONCETTA PERONE, administratrix ad prosequendum of BENJAMIN PERONE, Plaintiffs, -vs- JOHNS-MANVILLE CORPORATION, a corporation of the State of New York. Defendant.	ACTION AT LAW NOTICE OF MOTION

TO:
HOBART & MINARD,
Attorneys for Defendant,
Lefcourt Bldg.,
Newark, N. J.

GENTLEMEN:-

PLEASE TAKE NOTICE, that on Monday, September 19, 1932, at 10:30 A. M., or as soon thereafter as counsel may be heard, I shall make application to the Honorable William N. Clark, Judge of the United States District Court, at his chambers in the Lefcourt Building, Newark, New Jersey, for an order substituting the executors of the estate of Beniamin Perone, also known as Benjamin Perone, deceased, in place of Concetta Perone, administratrix of the estate of Benjamin Perone, deceased, and administratrix ad prosequendum of Benjamin Perone deceased, as the party plaintiff, and shall then and there seek to file an amended and supplemental complaint in noting the above change.

Samuel Greenstein
Attorney for Plaintiff.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY.

CONCETTA PERONE, administratrix of the Estate of BENJAMIN PERONE, deceased, and CONCETTA PERONE, administratrix ad prosequendum of BENJAMIN PERONE, deceased,	:	
Plaintiff,	:	Action at Law
-vs-	:	ORDER
JOHNS-MANVILLE CORPORATION, a corporation of the State of New York,	:	
Defendant.	:	

Application having been made by the plaintiff, to amend the complaint by substituting Concetta Perone and Elias Barbati, executors of the estate of Beniamino Perone, (also known as Benjamin Perone), deceased, as the party plaintiffs to continue the action heretofore commenced, and the matter having been heard before me in the presence of Samuel Greenstone, attorney of plaintiff, and Hobart & Minard, attorneys of the defendant, and the Court having heard the argument of counsel and considered the briefs filed in this case; it is, on this 27th day of March, 1933,

ORDERED, that the said Concetta Perone and Elias Barbati, executors of the estate of Beniamino Perone, (also known as Benjamin Perone), deceased, be substituted as party plaintiffs to continue the action heretofore commenced.

FURTHER ORDERED, that the complaint be amended to allege the finding of the Last Will and Testament of Benjamin Perone, deceased, and the qualification and appointment of Concetta Perone and Elias Barbati, as executors

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of the estate of Beniamino Perone, (also known as Benjamin Perone), deceased; the amended complaint to be filed and copy thereof served on attorneys for defenda within ten days from the date hereof, and the defendant to have twenty days after the date of such service to file its answer thereto.

Wilbur Clark
U. S. D. J.

O.K. as to form
Hobart Allenard
per GSH.

Defendant prays an exception to this order and same is allowed and signed and sealed accordingly.

Wilbur Clark (L
U. S. D. J.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY.

CONCETTA PERONE AND ELIAS BARBATI, executors of the estate of BENIAMINO PERONE, also known as BENJAMIN PERONE,	:	Action at Law
Plaintiffs,	:	ANSWER TO SECOND AMENDED AND SUPPLEMENTAL COMPLAINT
-vs-	:	
JOHNS-MANVILLE CORPORATION, a corporation of the State of New York,	:	
Defendant.	:	

The defendant, JOHNS-MANVILLE CORPORATION, a corporation of the State of New York, having its principal office in New Jersey at Manville, Somerset County, says that:

FIRST DEFENSE TO FIRST COUNT

1. It denies paragraph 1, except that it says that the plaintiffs' testator was in its employ at its plant in Manville, New Jersey, from December 28, 1926, to the month of November, 1928.

2. It denies paragraph 2, except that it says that it was and has been engaged in the manufacture of asbestos products for commercial purposes from December 28,1926, to the present time.

3. It denies paragraph 3, except that it says that it employed the plaintiffs' testator from December 28,1926, to the month of November, 1928.

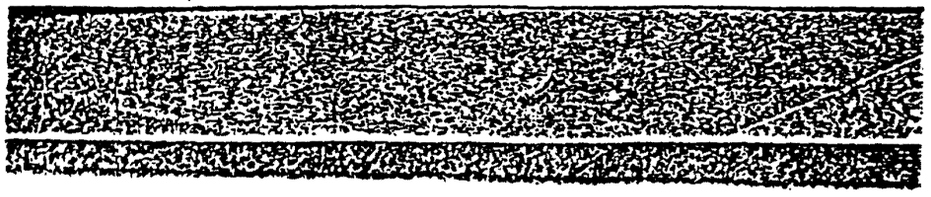
4. It denies paragraph 4.

5. It denies paragraph 5.

6. It denies paragraph 6.

7. It denies paragraph 7.

8. It has no knowledge or information sufficient to form a belief as to the allegations of paragraphs 8,9 and 10.



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SECOND DEFENSE TO FIRST COUNT

The injury and the disease alleged in the complaint were due to one of the risks of his employment assumed by the plaintiffs' testator as part of the terms of his contract of employment.

THIRD DEFENSE TO FIRST COUNT

The injury and the disease alleged in the complaint were due to one of the risks of his employment assumed by the plaintiffs' testator as part of the terms of his contract of employment in that the said testator knew, or by the exercise of reasonable care on his part should have known, the alleged dangers of his employment.

FOURTH DEFENSE TO FIRST COUNT

The injury and the disease alleged in the complaint were caused by contributory negligence on the part of the plaintiffs' testator.

FIFTH DEFENSE TO FIRST COUNT

The injury and the disease alleged in the complaint were caused by contributory negligence on the part of the plaintiffs' testator in that the plaintiffs' testator failed to exercise reasonable care to protect himself against the alleged dangers of his employment by using the mask and other appliances provided by the defendant for this purpose.

SIXTH DEFENSE TO FIRST COUNT

The injury and the disease alleged in the complaint were due to negligence on the part of a fellow-servant of the plaintiffs' testator in failing to warn and instruct the plaintiffs' testator to use the mask and other appliances provided by the defendant for the purpose of protecting him against the alleged dangers of his employment.

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SEVENTH DEFENSE TO FIRST COUNT

The action of the plaintiffs was barred at the time of the death of the plaintiffs' testator because the original action was not commenced and instituted by the plaintiffs' testator during his lifetime within two years next after the alleged cause of action accrued.

EIGHTH DEFENSE TO FIRST COUNT

The action alleged in the complaint is for an alleged trespass done to the person of the plaintiffs' testator during the lifetime of said testator; said action was not commenced and instituted by said testator during his lifetime within two years next after the alleged cause of action accrued.

FIRST DEFENSE TO SECOND COUNT

1. It repeats the allegations of paragraphs 1, 2, 3, 4, 5, 6 and 7 of the First Defense to First Count.

2. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 2.

3. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 3.

4. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 4.

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5. It denies the allegations of paragraph 5.

6. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 6.

SECOND DEFENSE TO SECOND COUNT

It repeats the allegations of the Second Defense to First Count.

THIRD DEFENSE TO SECOND COUNT

It repeats the allegations of the Third Defense to First Count.

FOURTH DEFENSE TO SECOND COUNT

It repeats the allegations of the Fourth Defense to First Count.

FIFTH DEFENSE TO SECOND COUNT

It repeats the allegations of the Fifth Defense to First Count.

SIXTH DEFENSE TO SECOND COUNT

It repeats the allegations of the Sixth Defense to First Count.

SEVENTH DEFENSE TO SECOND COUNT

The action of the plaintiffs was not commenced or sued within two years after the death of the plaintiffs' testator.

EIGHTH DEFENSE TO SECOND COUNT

1. The death of the plaintiffs' testator is alleged to have been caused by the alleged wrongful act, neglect or default of the defendant.

2. The said alleged wrongful act, neglect or default is alleged to have been such as would, if the death of the plaintiffs' testator had not ensued, have entitled the said testator to maintain an action and recover damages in respect thereof.

3. Said alleged cause of action was not commenced and instituted within two years next before the date wher

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said alleged act, neglect or default would have entitled said testator to maintain an action and recover damages in respect thereof, if the death of the testator had not ensued.

NINTH DEFENSE TO SECOND COUNT

Defendant will object that this count discloses no cause of action in that it appears on the face thereof that the plaintiffs' testator died on April 7, 1930, and this action was not brought by the plaintiffs within two years after the date of his death.

Hubbard & Menard
Attorneys of Defendant.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CONCETTA PERONE AND ELIAS BARBATI, executors of the estate of BENIAMINO PERONE, also known as BENJAMIN PERONE, deceased,	)	
Plaintiffs,	)	ACTION AT LAW
-vs-	)	AMENDED AND SUPPLEMENTAL COMPLAINT.
JOHNS-MANVILLE CORPORATION, a corporation of the State of New York,	)	
Defendant.	)	

FIRST COUNT

The plaintiffs, Concetta Perone and Elias Barbati, executors of the estate of Beniamino Perone, also known as Benjamin Perone, residing at Bound Brook, Somerset County and State of New Jersey, say that:-

1. The testator, Beniamino Perone, also known as Benjamin Perone, was in the employ of the defendant corporation at its plant at Manville, New Jersey, in the month of November, 1928, and for several years prior thereto.

2. At the time herein set forth, the defendant corporation was engaged in the manufacture of asbestos products for commercial purposes.

3. The said defendant employed the testator at the time and place aforesaid in its manufacture of said asbestos products and the said defendant not only knew, but should have known, that the said asbestos products contained certain dangerous, insidious and harmful agencies composed of asbestos fibers and other particles that were destructive to life and health in the human body when brought into contact with the same.

4. The defendant not only knew, but should have known the dangerous nature of the said asbestos fibers and particles, but failed to keep the same in control and was negligent in allowing the said dangerous fibers and

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particles to escape and to come into close proximity of the testator's person and exposed the testator so that he came into contact with and inhaled the said dangerous fibers and particles to the extent that his bronchial tubes, lungs and body became permeated and infected with the same.

5. The testator was not informed or warned by the defendant, and had no knowledge of the nature of the said dangerous asbestos fibers and particles with which he was brought into close proximity by reason of the negligence of the defendant.

6. The negligence of the defendant complained of is as follows:-

(a) In failing to use reasonable care to provide the testator with a reasonably safe place of work.

(b) In failing to use reasonable care to provide the testator with proper masks or other appliances or safeguards in said work.

(c) In failing to use reasonable care to provide a proper ventilating system at its plant.

(d) In failing to use reasonable care to give proper warning, information and knowledge about the dangerous character of its work with the said asbestos fibers and particles to the testator, at the time and place above mentioned.

7. The said asbestos fibers and particles were introduced into the testator's body at the time and place aforesaid so that the testator was caused to suffer serious injuries externally and internally, in and about his head, body and limbs, causing him great pain and suffering, both mental and physical, greatly lowering his resistance to disease so that he became a victim of pulmonary troubles, and died as a result thereof on April 7th, 1930; and by reason of the loss of the major part of his lifetime, of his physical and mental well being, of his

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wage earnings, and also the considerable amount of medical expense involved in his effort to retard the suffering from his disease and mend the wrecking of his body, he was caused to suffer losses and damages to the extent of $50,000.

8. On the 14th day of June, 1930, Concetta Perone was duly appointed by the surrogate of Somerset County, administratrix of the goods and chattels, rights and credits which were of Beniamino Perone, also known as Benjamin Perone, deceased.

9. Subsequent to the appointment of the said administratrix, a lost Will of the said decedent was found under with the plaintiffs, Congetta Perone and Elias Barbati were made executors of the estate of Beniamino Perone, also known as Benjamin Perone.

10. The said Will was duly probated by the surrogate of Somerset County, on May 6, 1930, and the administration heretofore granted was made null and void, and letters testamentary were granted to the plaintiffs, who here and now proffer their said letters testamentary.

THE PLAINTIFFS, as executors of the estate of Beniamino Perone, also known as Benjamin Perone, deceased, demand the sum of $50,000.00 for losses sustained to the estate of their testator, under this first count.

SECOND COUNT.

The plaintiffs, Congetta Perone and Elias Barbati, executors of the estate of Beniamino Perone, also known as Benjamin Perone, residing at Bound Brook, Somerset County and State of New Jersey, say that:-

1. They repeat the allegations of paragraphs one, two, three, four, five, six and seven of the first count.

2. On the 14th day of June, 1930, Concetta Perone was duly appointed by the surrogate of Somerset County administratrix ad prosequendum of Beniamin Perone, also known

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as Benjamin Perone, deceased, to prosecute the action for damages for the death of her testator, for the benefit of the next of kin of Beniamino Perone, also known as Benjamin Perone, deceased.

3. They repeat the allegations of paragraphs nine and ten of the first count.

4. The said Beniamino Perone, also known as Benjamin Perone, left surviving him his wife, Congetta Perone, and his children, John Perone, Mary Perone, Dominic Perone, Ralph Perone, Charles Perone, Nicholas Perone and Benjamin Perone, Jr., all dependent upon the said testator for support.

5. The plaintiffs, as executors as aforesaid, for the benefit of the said next of kin, are vested by virtue of the statute in such case made and provided, with a cause of action against the defendant for negligently causing the death of their testator, and bring this action within two years after the death of the said testator.

6. The said next of kin suffered pecuniary losses by reason of the death of the said Beniamino Perone, also known as Benjamin Perone, in the sum of $75,000.00.

THE PLAINTIFFS, as executors as aforesaid, demand the sum of $75,000.00 under this second count, from the defendant.

Samuel Greenstone
Attorney for Plaintiffs.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY.

CONCETTA PERONE, AND ELIAS BARBATI, executors of the estate of BENIAMINO PERONE, also known as BENJAMIN PERONE, Plaintiffs, -vs- JOHNS-MANVILLE CORPORATION, a corporation of the State of New York, Defendant.	ACTION AT LAW REPLY TO ANSWER TO SECOND AMENDED AND SUPPLEMENTAL COMPLAINT.

The plaintiffs, for reply to Answer to second amended and supplemental complaint of the defendant, filed herein, say that:-

1. They deny all the affirmative defenses alleged therein.

Samuel Greenstone
SAMUEL GREENSTONE
Attorney for Plaintiffs.

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UNITED STATES DISTRICT Court
FOR THE DISTRICT OF NEW JERSEY.

CONCETTA PERONE AND ELIAS BARBATI, executors of the estate of BENIAMINO PERONE, also known as BENJAMIN PERONE,

Plaintiffs

vs.

JOHNS-MANVILLE CORPORATION, a corporation of the State of New York,

Defendant

Action at Law.

ORDER FOR DISCONTINUANCE.

L- 1954

The above entitled cause having been settled between the parties thereto;

It is ORDERED, that the same be, and it is hereby discontinued, without costs to either party as against the other.

George T. Cammer
Clerk
by Charles H. Cahn
Deputy

Entered June 13, 1934

On motion of
Nevett D. Munn
Attorneys of defendant

Consent is hereby given to the making and entering of the above order.

Attorney for plaintiff

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