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Lum Law Notes

Press Release

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## Lum, Drasco & Positan LLC Attorneys At Law Since 1870

### **\$9.425 Million Settlement Involving Electrocution and Death of an Andover Township Man**



On April 22, 2022, Lum, Drasco & Positan members Gina M. Sorge, Esq. and Dennis J. Drasco, Esq., secured a \$9,425,000.00 settlement for the Estate of a Sussex County man who was electrocuted in Andover Township on March 2, 2018. The case settled on the eve of trial, before the Honorable Robert J. Brennan, J.S.C., following a four-year litigation.



Jersey Central Power and Light Company (JCP&L) and First Energy Service Company (FESC), represented by Gregory Kunkle, Esq., of Thomas, Thomas and Hafer, LLP, contributed \$8,500,000.00, and the Township of Andover, represented by Roman B. Hirniak, Esq., of King, Moench, Hirniak & Mehta, LLP, contributed \$925,000.00 to the settlement.

The deceased victim, Eric Thomas, was electrocuted by volts escaping from a down, primary power line at or near 21 Lenape Avenue, Andover Township. Mr. Thomas was pronounced dead at 7:13 p.m. Two hours before Eric Thomas was electrocuted, a resident of Lenape Avenue had called 9-1-1 and informed the Township of Andover of the existence of the live, primary power line. Andover Township Police and Fire personnel were dispatched to Lenape Avenue. Prior to their departure at approximately 5:28 p.m., emergency personnel did not close Lenape Avenue to pedestrian or vehicular traffic or inform the residents in the immediate area, including Eric Thomas, of the existence of the live power line.

JCP&L, a wholly owned by subsidiary of FirstEnergy Corp., provided electrical services to the residents of Lenape Avenue and was responsible to maintain the power lines, utility pole, and equipment at Lenape Avenue.

On March 2, 2018, JCP&L's operations were subject to its "Emergency Response Plan" or "E-Plan", which E-Plan had been activated one day earlier in anticipation of Winter Storm Riley, which arrived in New Jersey on March 2, 2018. The E-Plan had been created by FESC for JCP&L five years earlier, in response to the New Jersey Board of Utilities (BPU) January 23, 2013 Orders. The BPU directives included JCP&L's hiring of more personnel, and First Energy's creation of a "storm plan" to ensure that JCP&L expeditiously responded to reports of down and live power lines, and the restoration of

power to JCP&L's one million customers in the State of New Jersey. The BPU directives also included that First Energy ensure that JCP&L had sufficient trained personnel in New Jersey to respond to emergencies attendant to storms.

Under the E-Plan, a New Jersey resident's report of a live, down power line could not be made directly to JCP&L. Rather, the report was required to be made to an FESC representative located in either Ohio, Pennsylvania or West Virginia. Upon the FESC representatives' memorialization of said report, FESC's "PowerOn" computer system's generated work order was to be transmitted to a JCP&L dispatcher in New Jersey. Upon notification, JCP&L was required to immediately dispatch a trained "hazard responder" or "troubleshooter" to respond to the reported live, down power line.

The E-Plan also provided, that upon JCP&L's request, FESC would secure trained personnel to assist JCP&L with power restoration and down power lines attendant to storms, which deployment and arrival in the State of New Jersey was to occur within "ninety minutes" of JCP&L's request.

On March 2, 2018, at approximately 5:00 p.m., the Andover Township Dispatcher believed that he reported the live, down power line at Lenape Avenue to JCP&L. However, this report was received by an FESC representative, who designated this report as a "life and limb emergency". FESC's PowerOn computer system generated a work order at 5:05 p.m. Following the initial 5:00 p.m. report, several residents of Lenape Avenue, including Eric Thomas, observed a fire in the woods at or near 21 Lenape Avenue. Several residents, and the Township of Andover Dispatcher, believed that they reported the worsening conditions to JCP&L. These reports, made prior to Eric Thomas' electrocution and death, were received by FESC representatives.

FESC did not transfer the 5:05 p.m. work order to JCP&L until 11:46 p.m., almost seven hours after the "life and limb emergency" report was made, and almost five hours after Eric Thomas' electrocution and death. JCP&L's dispatch of personnel to Lenape Avenue at 11:52 p.m., indicated that it was unaware that Eric Thomas had been electrocuted and died almost five hours earlier.

On March 2, 2018, JCP&L employed only 1,373 individuals to service over 1 million customers in the State of New Jersey, which work force was less than it had been 5 years earlier. JCP&L did not employ any individual who held a "hazard responder" position. JCP&L had only 33 "troubleshooters" to respond to over 3,000 reported down power lines and "life and limb" emergencies, including the Lenape Avenue report made to FESC at 5:00 p.m.

On March 1, 2018, JCP&L had requested FESC deploy 200 trained personnel to the State of New Jersey, and on March 2, 2018, JCP&L requested an additional 800 "crews" be deployed to New Jersey. FESC did not secure nor deploy trained personnel to New Jersey until Sunday March 4, 2018.

Gina M. Sorge, Esq., stated that since FECorp acquired JCP&L in October, 2001, it required its subsidiary, FE Service, to provide services to JCP&L, and JCP&L to compensate First Energy Service Company accordingly. The January 23, 2013 BPU orders were the product of its investigation of JCP&L's performance during and after the

advent of Hurricane Irene in August, 2011, the “October, 2011 Snowstorm”, and the massive down power lines and outages attendant to “Superstorm Sandy” on October 29, 2012. “Despite the BPU directives to First Energy and JCP&L reflecting a complete modification of JCP&L’s storm operations five years earlier, JCP&L’s ‘E-Plan’ operations on March 2, 2018, were subject to First Energy’s control, including the reporting and response to live, down power line at Lenape Avenue.” Ms. Sorge further stated that First Energy and JCP&L had posited throughout the litigation that the exclusion of any direct reporting, communications response and/or ability to secure sufficient trained personnel to respond to live, down power lines or “life and limb” emergencies to, and subject to JCP&L’s discretion, the placement of all control in First Energy was a “cost-cutting measure”. The utilities also asserted that consideration of the loss of power to JCP&L customers was the reason that JCP&L’s operational protocol on March 2, 2018 excluded any authority to remotely deactivate the live power line at Lenape Avenue at JCP&L’s Morristown office.

Ms. Sorge further noted that the BPU had conducted an investigation of New Jersey public utilities’ performance during the March 2, 2018 storm and winter storm Toby which followed shortly thereafter in March, 2018. BPU issued orders on July 25, 2018, which included directing JCP&L “control” over its storm operation be expanded.

Ms. Sorge said that it is the hope of her client, Eric Thomas’ deceased wife, and his surviving children, that the Defendants implement changes to their protocol and operations to prevent the recurrence of this tragedy.

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