

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALDERWOODS (PENNSYLVANIA), INC., a  
wholly owned subsidiary of SERVICE  
CORPORATION INTERNATIONAL, t/a  
BURTON L. HIRSCH FUNERAL HOME

Docket No. C-2016-2522634

v.

DUQUESNE LIGHT COMPANY

**PREHEARING CONFERENCE MEMORANDUM BY COMPLAINANT,  
ALDERWOODS (PENNSYLVANIA), INC.**

In accordance with the Second and Third Interim Orders issued by the Administrative Law Judge, Alderwoods (Pennsylvania), Inc., a wholly owned subsidiary of Service Corporation International, t/a Burton L. Hirsch Funeral Home (“Hirsch”), submits the instant memorandum in advance of the prehearing conference scheduled for June 13, 2016.

**I. FACTS AND PROCEDURAL HISTORY**

This case arises from a fire which completely destroyed Hirsch’s funeral home on or about January 10, 2009. Hirsch alleges that after a motor vehicle hit a utility pole on Forward Avenue in Pittsburgh, behind Hirsch’s funeral home, high-voltage lines contacted low-voltage lines, sending a surge of high-voltage power into the funeral home’s panel box, damaging the circuit breakers so that they could no longer withstand the flow of electricity. The funeral home was the only building receiving electric service from the damaged pole. Hirsch alleges that before it restored service to the funeral home, Duquesne Light was on actual or constructive notice of the breakers’ compromised condition, but Duquesne Light never attempted to inspect the funeral home’s equipment before restoration nor did Duquesne Light warn Hirsch that until the equipment was inspected and certified by a third party, service would not be restored. When service was restored to the funeral home, several hours after the motor vehicle accident, the

current heated the funeral home's metal panel box containing the compromised electrical equipment, igniting the box's wood backing, destroying the building and everything inside it.

Hirsch first filed a complaint against Duquesne Light in the Court of Common Pleas of Allegheny County on September 22, 2009. Contending that it had been under no duty in tort to Hirsch when it restored service, in late 2010 Duquesne Light moved for summary judgment. The Court of Common Pleas granted the motion. On appeal, the Superior Court reversed. Alderwoods (Pennsylvania), Inc. v. Duquesne Light Co., 52 A.3d 347 (Pa. Super. 2012).

On December 15, 2014, the Supreme Court reversed as well, finding a duty under the facts alleged. Alderwoods (Pennsylvania), Inc. v. Duquesne Light Co., 106 A.3d 27 (Pa. 2014). The court also wrote that because the PUC but not Duquesne Light had raised the question of transfer of jurisdiction to the PUC, the question was not part of the appeal and that therefore the court would not consider it. 106 A.3d at 29 n. 13. However, later in its opinion, in refuting Justice Eakin's dissent, the court's majority wrote that:

While the dissent offers various inquiries about what actions Duquesne Light might have taken which would be considered reasonable under the circumstances, . . . these are precisely the sorts of considerations relegated to juries in cases in which a common-law duty exists and there are material factual questions concerning whether such obligation has been met.

106 A.3d at 42. The court also stated that "generally, courts establish the landscape of common-law duties as a matter of law, and juries decide, in individualized circumstances presented and where there are material facts in dispute, whether such duties have been breached." Id., n. 17.

After remand to the Court of Common Pleas, Duquesne Light moved for bifurcation under the doctrine of primary jurisdiction. Hirsch responded in opposition, and at the request of the Court, the parties also filed supplemental briefs. In spite of Hirsch's arguments in opposition that Pennsylvania does not permit damages claims to be referred to the PUC, the trial court

granted the motion, and denied reconsideration, but without any opinion which might offer an explanation as to why longstanding authority was ignored. In January, after refiling its complaint with the PUC, Hirsch filed its preliminary objection based upon the lack of jurisdiction. In the objection, Hirsch explained that if the objection were sustained, it would move the Court of Common Pleas to reactivate the case. Duquesne Light filed a timely response, and Hirsch followed with a reply.

The A.L.J. issued his opinion on April 5, 2016. In spite of the clear holding of Poorbaugh v. Pennsylvania Public Utility Commission, 666 A.2d 744 (Pa. Cmwlth. 1995), that in damages claims the PUC does not have jurisdiction even to consider liability only, the A.L.J. found such jurisdiction anyway. The A.L.J. also wrote that “If Hirsch’s allegations are proven by a preponderance of evidence at a hearing, the allegations may well constitute a violation of the reasonable and adequate service requirements of Section 1501 of the [Public Utility] Code,” even though Hirsch has never alleged that Duquesne Light violated the reasonable and adequate service requirement of the Public Utility Code.

On April 22, 2016, Hirsch filed a petition for interlocutory review of the A.L.J.’s opinion with the Commission on the bases of lack of jurisdiction and of the A.L.J.’s adjudication of a hypothetical question not involving an actual case or controversy. On May 2, 2016, Hirsch filed its brief in support of the petition. On May 4, 2016, the Commission waived the thirty-day period for consideration of the petition required by 52 Pa. Code § 5.303.

## **II. ISSUES WHICH COMPLAINANT INTENDS TO PRESENT**

Whether Respondent, Duquesne Light Company, is liable for Hirsch’s damages for negligently restoring power to Hirsch’s funeral home, having had actual or constructive knowledge that its circuit breakers had been compromised during the motor vehicle accident.

### **III. WITNESSES**

Hirsch reserves the right to call the following witnesses:

As to facts of the incident, Duquesne Light's linemen:

- Timothy Shields
- Brandon Boehm
- Robert Pierce
- Brian Novak
- Joseph Frankhauser
- Richard Sipe
- Hirsch also intends to read from the deposition of Donald Lewis, line crew supervisor for Duquesne Light who, upon information and belief, has passed away.

Also, as to the facts of the incident:

- James Runatz, Duquesne Light's account manager, responsible for customer service, regarding his telephone call to Hirsch's answering service when the fire was in progress
- David James, Duquesne Light service center coordinator, regarding his interaction with the crew that restored power to Hirsch's funeral home
- John Gilkey, detective with Fire and Arson Unit, Pittsburgh Police Department
- Themis Wise, neighbor of the funeral home, who witnessed the fire from across the street
- Peter Johnson, assistant funeral director for Hirsch
- Kenneth Hunkele, staff assistant for Hirsch

Hirsch's experts:

- Richard W. Wunderley, P.E., regarding the cause of the fire
- Brian Gray, C.F.I., C.V.F.I., regarding the cause of the fire

Hirsch reserves the right to call any witness not on this list.

#### **IV. EXHIBITS**

Hirsch reserves the right to introduce the following exhibits into evidence:

- All deposition transcripts
- Copies of all pleadings
- Each party's answers to interrogatories
- All documents produced by the parties in discovery
- Documents obtained from government sources, such as the Pittsburgh Fire Department
- Photographs of Hirsch's premises

Hirsch hereby incorporates by reference the exhibits submitted to the Supreme Court in its Reproduced Record, attached hereto as Exhibit "A". Hirsch reserves the right to introduce any exhibit not on this list.

#### **V. SETTLEMENT**

On February 25, 2015, Hirsch's counsel wrote to defense counsel to demand \$325,000 in settlement of this matter, approximately fifty percent of Hirsch's recoverable damages of \$650,000. See Exhibit "B" attached. On May 16, 2016, Duquesne Light made its first settlement offer, \$50,000.

In response to the offer, on May 18, 2016 Hirsch reduced its demand to \$275,000. Duquesne Light countered by then offering \$55,000.

Hirsch is unable to further reduce its demand until Duquesne Light demonstrates willingness to place a realistic value on this case.

Respectfully submitted,

**WHITE AND WILLIAMS LLP**

/s/ Alan J. Charkey

By: Alan J. Charkey, Esquire

Attorneys for Complainant,  
Alderwoods (Pennsylvania), Inc., a wholly  
owned subsidiary of Service Corporation  
International, t/a Burton L. Hirsch Funeral  
Home

Date: May 27, 2016