81911

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
9th Circuit Court of Common Pleas
R. Markley Dennis, Circuit Court Judge

Civil Case No. 2013-CP-10-6019
Appeal, 2016-001035

Jack Powell, Appellant,

v.

Knology of Charleston Inc. Respondent,

RELIEF OF JUDGMENT

Pro se Appellant, Jack Powell
1402 Camp Road unit 8-A
Charleston S.C. 29412
(843)952-4762

Mcangus, Goudelock & Courie
735 Johnnie Dodds Blvd.
Mt. Pleasant, S.C. 29464
Attorney, Benjamin Davis

STATEMENT OF CASE

Beginning on June 21st, 2012

1. On June 21, 2012 around 9:00 PM in the dark, "56" year old Jack Powell was walking up the right of way at the busy 930 Folly Rd. and tripped over an unburied cable line. He struck his forehead when he hit the ground and was knocked unconscious. Mr. Powell also injured his neck, shoulder and knee. Mr. Powell was noticed lying face down in the right of way by a lady and she called 911, because he was unconscious. Then the EMS arrived and they diagnosed Mr. Powell with a traumatic injury and applied a neck collar. Mr. Powell was stabilized on a stretcher and taken to the MUSC emergency room. Plaintiffs Complaint p.1 & 4 & memoran. in support for MSJ. Exh. B., Appellants Exh A.

2. Mr. Powell had to be given pain medication twice for his ongoing pain and also had to endure hours of painful X-rays. Appellants Exh. B-E & F and previous surgeries;

1. Neck where he has disc disease from a previous surgery.

2. Right shoulder where he has rotor cuff disease from a previous surgery.

3. Right knee where he has a U shaped metallic device overlying the lateral condyle and loose bodies, also osteoarthritis from "2" knee surgeries from playing college football which included a reconstruction at Duke Hospital and he now he needs a complete knee replacement.

3. On October 28th 2013, Jack Powell filed this action against Knology Inc. in the Charleston County Court of Common Pleas for the Ninth Judicial Circuit for gross

negligence, negligent supervision of employees & subcontractors and for the breach of duty.

4. The 2 motions for summary judgment were heard by the Honorable Judge R. Markley Dennis on April 2nd 2015 and he denied Plaintiff's motion for summary judgment and didn't allow the Plaintiff to make one statement and then he granted the Defendants motion for summary judgment after a lengthy hearing. On June 3rd, 2015 Judge Dennis denied Plaintiffs motion to recuse him and then on April 5th 2016 Judge Dennis signed the Order to Grant Summary Judgment.

STATEMENT OF ISSUES ON APPEAL

5. The Court erred when Judge Dennis exercised a biased attitude towards Pro se on 7-30-14 by insulting him on the same day as the Defendant was compelled, because of improper Discovery responses. He continued the same biased attitude during this MSJ hearing with his manner, tone of voice, interruptions with unwarranted angry disposition, improper rulings, inadvertence and he refused to Recuse himself on May 6th 2015.

6. The Court erred the day before the hearing in Judge Dennis's chambers because he had received the Defendant's Memorandum in Support for MSJ before the hearing and the Plaintiff made a complaint because he was just told in the hallway by Defendant's Attorney he wouldn't receive one before the hearing in the morning. Judge Dennis responded with "It's no big deal because it was the same issues." Therefore the Pro se was unable to discover for himself that the Defendant had submitted an alternative defense using a new photo that actually proved Knology was on the right of way after 6-21-21 which was a major issue and dispute, because Knology had denied they had been on the right way after 6-21-12. Furthermore Judge Dennis failed to make Pro se a copy

from his copy that he stated he had during the MSJ hearing. He also failed to instruct Attorney Benjamin Davis to make Mr. Powell a copy and Judge Dennis should have continue the MSJ hearing because Pro se was unable to prepare and it was premature.

7. The Court erred when Judge Dennis signed the Order after reading in the motion to Recuse p. 2, para. 2 & 4 & p. 7 para. 3 that the Defendant attorney exercised misconduct by continuing a fraudulent tactic when improperly filing their memorandum with the Charleston County Clerks Office the same day as the MSJ hearing and it was stamped and filed at 1:28 pm.

8. The Court erred when Judge Dennis kept telling Plaintiff he needed to submit a request for supplemental discovery and Plaintiff explained that he had ordered him to do so on 7-30-14 and Plaintiff did supplement. But, Judge Dennis kept repeating this during the hearing & discovery dispute was ongoing, this was a mistake & inadvertence.

9. The Court erred when Plaintiff wasn't allowed to submit his rebuttal argument about their new photo entered in Defendants memorandum that may have created doubt in Plaintiff's Complaint. The Plaintiff had a legitimate argument of why there wasn't any assertion to the 3rd line, which may have been an issue of dispute with Judge Dennis.

10. The Court erred when granting summary judgment because their motion was premature. The Defendant never supplemented the original discovery like they stated they would and then they intentionally failed to properly respond to Judge Dennis's ordered supplemental request that was supposed to be returned to the Pro se before the MSJ hearing.

11. The Court erred when not recognizing the Defendant had admitted during

discovery they were the owners of the 2 unburied cable lines they abandoned in the right of way.

12. The Court erred when repeatedly requiring the Plaintiff to submit an affidavit when he had already submitted Request #6 that was already answered under oath and proved the Appellant was correct, truthful and he didn't need an affidavit.

13. The Court erred when Judge Dennis forgot his statement "if you installed the cables, your responsible. Are you not" and Plaintiff had submitted a preponderance of evidence where Defendant admitted the lines were theirs and Judge Dennis still granted them Summary Judgment.

14. The Court erred when ignoring the fact that on the first day at the job site the Defendant violated multiple ordinances, state and local laws.

15. The Court erred when not believing the Pro se Plaintiff about his proof in his Complaint, when there was a computer right in front of Judge Dennis so he could verify the truthful statement by Mr. Powell.

16. The Court erred after Plaintiff told Judge Dennis that the Knology manager Lee Endicott didn't work with them anymore and Judge Dennis ignored this new evidence and this was an issue because Plaintiff still hadn't received production concerning the facts of why he had offered Mr. Powell a monetary settlement and documents from their main out of state office that agreed to offer a monetary payment to Mr. Powell.

17. **KNOLOGY'S 1st DAY AT 930 FOLLY ROAD**

KNOLOGY WORK ORDER PHONE LOG 08/14/2006, 08:35:AM
States; This citing needs a drop bury. They are being installed today due to an expedited request sales. Please work this ASAP. NOTE; Pete Smith is concerned about a sprinkler system, etc. Staysmayer Inc. @ 930 Folly Rd. Ste. "A" Chas 29412 – RG11 / 1 Drop / from Pole to Meter.

Appellant submits; Phone log states they are concerned and had an expedited installation for today, ASAP! Knology of Charleston Inc. was rightly concerned about a sprinkler system and furthermore Appellant submits Defendant never introduced any requested discovery of how the underground sprinkler lines were identified and how or who actually buried any lines. Plain. 2nd MSJ, Exh. K & Plain. motion for reconsideration Exh. O. This was an unanswered genuine issue of dispute before, during and after this MSJ hearing while Knology was violating S. C. Code of Laws on p. 8-9, Exh. V-Y. Judge Dennis erred when he signed the Order because of the issues of broken laws & discovery.

18. **ADMISSION REQUEST # 2** Plaintiffs Informal Request to the Court for 2nd Motion for Summary Judgment Exh. C, where the Defendant admits they "believe" the lines were installed properly which was an issue of dispute.

Ned v Hertz Corp. 356 So. 2D 274 (La. App 4 Cir. 1978)

The burden is only met only when the evidence indicates that the Defendants negligence was the most probable or likely cause of the occurrence and that no other factor can be reasonably be ascribed as the cause of the incident.

When the action requires proof by a preponderance of evidence, the non-movant must submit a "scintilla of evidence" to survive summary judgment. See **Handcock v**

Mid- South Mgmt. Co., 381 South Carolina 326, 330. 673 S.E.2D 801, 803 (2009)

19. The SCDOT stated Knology didn't acquire the Encroachment Permit that requires the legal safety measures to be met, because of the pressure to finish the "expedited request" to finish the job "ASAP" "today. This was gross negligence and the Defendant made a reckless and illegal decision to just drop the cable lines and eventually abandon them after their customers service was terminated on 6-8-2008 & 12-1-2009. Plaintiffs motion for reconsider Exh. O & Q no. 12. Defendant did owe a duty to their contracted Folly Oak Center's customers and the local citizens walking up the right of way in front of their business located at the busy 930 Folly Road.

20. **Hurst v East Coast Hockey League Inc**.
371 S..C. 33, 37, 637 S.E. 2 D. 560, 562 (2006)
See Plaintiffs Motion for Reconsideration p. 10

In order to prove negligence a Plaintiff must show;

1. Defendant owes a duty of care to the Plaintiff.
2. Defendant breached the duty by a negligent act or omission.
3. Defendants breach was the actual and proximate cause of the Plaintiff's injury.

21. Defendants 2 unburied cable lines were connected to units A & B at the Folly Oaks Center and running about 100 feet through the side of the front yard. Then they were trespassing across the adjacent Charleston County property and running about 30 feet up and across the right of way. The "2" lines were just dropped, not buried and left running through the front yard, **DROP FROM POLE TO METER** because there

wasn't enough time to discover where the sprinkler systems were. Therefore Defendant owed a duty to Charlestons pedestrians and Knology was intentionally negligent when they violated the legal process of acquiring the Encroachment permit, furthermore they failed in their duty to protect Mr. Powell from harm by avoiding a proper and legal inspection to see if their lines were buried properly, pursuant the codes of law and duty.

22. Knology was the original owner of the 2 cable lines that were connected to units A & B and were the most probable owner of the 2 unburied cable lines that were connected to the same units A&B on 6-21-12. Defendant never offered any other documentation of another company having cable service at the site. Therefore, Knology most likely caused the accident because of their negligent decisions. Furthermore, Judge Dennis erred when he was unconcerned about the Defendant violating state, county and city ordinances. See South Carolina Code of Laws Section Public Utilities Title 58-12-310 (e)(2), 58-12-50, 58-12-70, 58-12-10, 56-5-480 and Plaintiffs 2nd MSJ, bottom of p.4 & 5. Underground Conduits, Cables & Wires in Public Right of Way and Section 31-151 & p.7 Exh. B, see **Ned v Hertz Corp. 356 So. 2D 274 (La. App 4 Cir. 1978).** 60 (b)(1) inadvertence.

23. On 7-30-14 Respondent was compelled for discovery along with other cases to compel discovery and a motion for summary judgment. Then Judge Dennis made a continuous, aggressive & personal insult to Pro se Plaintiff by stating "I'm laughing at you too" that embarrassed, confused and rendered Plaintiff very apprehensive to speak and think of what to do during the cases. His bias also continued during this MSJ hearing

on 4-2-15. See Plaintiffs motion to Recuse Judge Dennis p. 5 last para. thru p.7. where Plaintiff filed a complaint to the South Carolina Disciplinary Board.

24. On 1-9-15 Plaintiff emailed Defendant Exh. A of Plain. 2nd MSJ, para 2, about the Document Request 14, 15 & evasive response 16; Plaintiff reminded the Defendant in para. 2, L. 7, he would make available inspecting & copying these records to Plaintiff and it's been over 5 months and I would like to come next week to see these records. The Plaintiff never received or read these documents consisting of relevant evidence before the MSJ hearing. Furthermore, the Defendant knew at the time of filing their motion it was improper because of their intentional tactic to not submit Judge Dennis's ordered supplemental request, therefore the motion was premature. Also, Plaintiffs mot. for recon. p. 2-3. Pursuant 56 (d)(2) (f).

25. On 1-12-15, 3 days after Plaintiff had e-mailed Defendant, we discussed when Plaintiff could come by to see the records and Defendant told Plaintiff on Monday you would call in a couple of days, but Defendant didn't and the Plaintiff never received these documents and was never allowed to come to their office. Therefore, Plaintiff was not able to argue against the MSJ properly because of their intentional evasive tactic of not producing the crucial & relevant evidence from admit and the companies documents that was ordered to be supplemented by the Plaintiff during his original Motion to Compel Knology on 7-30-15 by Judge Dennis who ordered the supplemental request during the hearing. Judge Dennis erred when he granted SJ and signed the Order for MSJ after he

heard this argued during the MSJ hearing and again reading it in Plaintiff's Motion to Recuse p. 4, #15. that reveals multiple issues of dispute. See also Plaintiffs 2nd motion for summary judgment. Exh. A, Judge Dennis erred pursuant Rule 56 (c)(1)(a) (c)((2) (d)(f)(g) & subdivision (c)(2) (e)(2)(3)(4) (f), 37 (a)(3) & 60 (b)(1) inadvertence.

26. On 3-13-15 Mr. Davis asked Plaintiff to continue the scheduling of a jury roster selection for trial because the time would allow us to tie up some loose ends on some outstanding discovery issues. Plaintiff agreed only because he thought Mr. Davis was speaking truthfully so he could fulfill his obligation concerning the Supplemental Admissions & Production that were still unanswered since 7-30-14 and were ordered by Judge Dennis. See Plaintiffs motion for reconsideration p. 2 & Exh. A. See Rule 60 (b)(3) misrepresentation, conduct, intentional deception and extrinsic fraud.

27. A couple of days later during a telephone call Plaintiff agreed to postpone the jury selection for the need for more Discovery and the next day on the 16th Attorney Ben Davis improperly filed his motion for summary judgment only to evade their proper responses to the supplemental admissions and production that was still unanswered. Defendant knew the filing of the MSJ was improper misconduct, misrepresentation, 60 (b)(1)(2)(3) & subdivision (b) and extrinsic fraud because of Attorney Benjamin Davis intentionally and fraudulently acted to deprive Pro se from obtaining their new photo and their alternative defense that was submitted in their memorandum for MSJ. Furthermore this was an attempt to deprive the Pro se his opportunity to be heard and

his right to defend himself during the Defendants MSJ hearing. Also 56 (b) (d) (f) subdiv. (c)(1)(2) (d) (e)(2)(4)

28. On 3-23-15 Mr. Davis returns the Supplemental Request and states; on Jul 30th 2014 Judge Dennis denied your motion. Appellant submits Judge Dennis only heard one Admit Request and then told Plaintiff to supplement his request. The original Document request was returned by Mr. Davis in the hallway and it wasn't complete. This was before the compelled hearing and it wasn't denied or deemed insufficient because Judge Dennis never read them and he only heard one admit. See Plaintiffs motion for recons. Exh B. Judge Dennis made a mistake by not knowing or investigating the facts concerning his statements, because Mr. Davis was trying to confuse the Court by stating he believes, Exh. I, **Tran. P. 3** L. 24 thru p. 5 L. 10 p. 4. L. 18-24. Judge Dennis erred when he didn't investigate the factual circumstances submitted by Attorney Mr. Davis that the Plaintiff's Supplemental Request for Admit and Documents were simply reasserted no's 4, 6, 7, 8, 11&15 which were relevant business discoveries that were never answered and Admit 15 was a completely new request.

29. **Tran p. 7,** L. 4-9, The Court's Judge Dennis made a mistake when he failed to ask whether these were just reasserted and did they answer his ordered supplemental request? He should have asked Defendant to answer at least one of his supplemental requests like production 6, 11 and admit 10 or 15, because the discovery so far was insufficient. Judge Dennis erred by inadvertently changing the subject from the relevant genuine issue of the

preponderance of undiscovered evidence in his ordered supplemental to Judge Dennis explaining to Plaintiff he needed to compel and that was why the hearing was held earlier with Knology on 7-30-14. The unanswered discovery should have been deemed admitted. See Rule 56 (d)(h) subdivision (c)(1)(a)(b) (2) (e)(2)(4), 60 (b)(1) Judge Dennis mistakes caused by inadvertence.

30. Production 6. is Plaintiff needing the documents of Knology's monetary offer from their upper office and Plaintiff notified Judge Dennis during the hearing that he was just told manager Lee Endicott wasn't working at Knology anymore. **Tran. p. 21**, L. 1-9 Judge Dennis erred because he wasn't concerned about the significance about their Charleston's manager's departure and the Defendants evasive responses concerning these documents until the Plaintiff didn't have an affidavit and Plaintiff didn't need one to prove what was already stated under oath by manager Lee Endicott. Judge Dennis stated he "read it" and it was his duty to read the Plaintiff's motion for reconsideration p. 3. & 4 Exh. N. and Plain. memorandum in support for MSJ p. 6., Production request 6. This motion was premature and Judge Dennis failed to understand the relevant facts and he was displaying inadvertence. Also Judge Dennis knew the Pro se was unfamiliar with affidavits and it obvious that the Plaintiff needed a continuance to obtain the affidavit if Judge Dennis felt this was an important issue for the Pro se. (60 (b)(1)(3)(4) for his mistakes and inadvertence & Rule 56 (f) (g) & 56 (c)(3) (c)(1)(b) (d)(1)(2)(3) & sub-division (c)(1)(2) (e)(1)(2)(3)(4) (f) (h) & Rule 6 (b) and 28 U.S.C. ~ 1746.

31. On 4-1-15 the day before the Motion for Summary Judgment hearing, Plaintiff was waiting in the hallway for a meeting in Judge Dennis's chambers, with Attorney Ben Davis. Plaintiff had asked where was their memorandum for MSJ and he responded that he had mailed it this morning. Plaintiff asked how can I Respond in time when we have to be in court in the morning at 9:30 and Mr. Davis responded with (shrugged shoulders). A few minutes later Plaintiff told Judge Dennis in front of one of his female associates about this and he said that it's "no big deal because it's just the same issues." See Plaintiff 2nd MSJ p.1. & motion to Recuse Judge Dennis on first page. Therefore Judge Dennis erred by displaying inadvertence, and made a mistake by allowing misrepresentation, misconduct and extrinsic fraud pursuant 60 (b)(1)(2)(3) (d)(3) & subdivision 60 (e)(4)(h)

32. **Tran. P. 11** no. 23-25 thru p. 12, no. 1-6 This was inadvertence by Judge Dennis and misrepresentation and misconduct by Mr. Davis when he told Pro se Mr. Powell he had mailed their memorandum that morning instead of hand delivering it before the meeting with Judge Dennis and therefore the Lower Court's Judge Dennis should have asked why did you mail it when you knew we were meeting today in my chambers? Also Judge Dennis should have known Pro se would be at a great disadvantage and apparently he had a copy or was given one after Plaintiff left the meeting. Because the next day during the MSJ hearing Judge Dennis stated "yes you did" and that was before Defendant filed it with the Charleston County Clerk of Court improperly at 1:28 pm, after the MSJ hearing which was a deceptive and a bad faith tactic to gain an advantage. Pro se was

unable to prepare and submit an argument about the new evidence that included an alternative defense that only proved Knology was on the right of way after 6-21-12. Therefore, because of Judge Dennis's opinion the Plaintiff didn't have their new evidence and he abused his discretion when he denied the Pro se's right to have and read the same memorandum Judge Dennis read before the MSJ hearing. Judge Dennis should have known he made a mistake during the meeting and after the hearing.

33. The improper fraudulent tactic was intentional and it was motivated by extrinsic reward of gaining advantage during the MSJ hearing, purely to cause the Pro se to be at a disadvantage by not being given a reasonable amount of time to prepare an argument for new evidence that was a surprise , mistake, inadvertence, misrepresentation, misconduct. See Defendants memorandum in support of MSJ Exh. D, **Black v. Lexington School Dist. No.2,** 327 S.C. 55, 488 S.E.2d 327 (1997) & Rule 56 (c)(3) (d)(1)(2)(e) (3) (e)(1)(2) (f)(g)(h) subdivision (e)(2)(4) (h), 15 (c)(1)(b) & 60 (b)(1)(2)(3)(4) and **Baughman v. American telephone Co. (1991).**

34. On 4-2-15 Judge R Markley Dennis made a mistake just before this MSJ hearing when he submitted an improper & confusing statement concerning discovery procedures. He made a threatening statement during a case right before this MSJ that was arguing about a discovery dispute and Judge Dennis stated he was "going to shake up Columbia" because it wasted the Courts time. Within the hour, during this MSJ hearing he chose to take the opposite position concerning the discovery by ruling with a biased attitude. See

Plaintiff's motion to Recuse Judge Dennis. p. 2, para. 2. 60 (b)(1) mistake, inadvertence.

35. But during Plaintiffs defense of a MSJ hearing on 7-30-14, case 2013-CP-10-5351 Judge Dennis granted them Summary Judgment, because it was a big deal to him that Pro se failed to respond to the Defendants memorandum in support of MSJ, which is now an issue in Appellants Appeal, now 2015-001331. This "big deal" happened only minutes after Judge Dennis made an insulting & biased remark about & to Pro se. Judge Dennis erred during this MSJ hearing because he did not question the failure of the Defendant to deliver the Memorandum pursuant 56 (e)(f) & the Plaintiff didn't have reasonable time to prepare to respond to the memorandum Judge Dennis read before the hearing and prepare his argument. Plaintiff's Motion to Recuse p.1, para. 3. & **Tran. p. 11** no. 20 thru p. 12. Rule 60 (b)(1)(3) inadvertence, mistake, surprise & misconduct and 56 (d)(1)(2)(3) & 56 subdivision (c)(2) (e)(4) (h) also **Black v Lexington School Dist (1997), Haines v Kerner (1972)**

36. On 7-30-14 in the hallway and ten minutes before the 9:30 am hearing began, the Defendant handed Plaintiff his response to production which was incomplete. During Knology's compelled because of evasive responses, Judge Dennis ordered Mr. Powell to supplement his requests for admit and production and during this MSJ hearing on 4-2-15 Plaintiff notified the Lower Court the Defendant failed to answer properly again which reveals there were still disputes. Then Judge Dennis failed to question Defendant about their second failure to respond properly, because he was confused and he was exercising

contempt towards the Pro se. Inadvertence and also Rule 60 (b)(1)(3) & Rule 56 (1)(2)(3) subdivision (e)(1)(2)(4).

37. See **Tran p. 3**, 9. thru p. 4, 25. The Plaintiff explained to Judge Dennis that there is an issue concerning improper responses to discovery requests and Attorney Ben Davis states Plaintiff is just reserving the same discovery. Then he states he "believes" which wasn't true, because the Production wasn't actually heard because it was returned incomplete in the hallway before the compelled hearing of July 30th, 2014 and Plaintiff was ordered by Judge Dennis to submit a supplemental request for Admit and Production which was how it was factually resolved, because there were still some issues because the Defendant didn't properly respond to the original discovery and that was why Judge Dennis ordered the supplemental request. But Judge Dennis failed to ask the Defendant if they were supposed to return the discovery ten days ago and then he made a mistake by failing to continue or deny this MSJ hearing, because it was premature.

38. Furthermore, Plaintiff was denied a full & fair opportunity to complete discovery because of bad faith and Judge Dennis ordered the supplemental request because he thought there was a likelihood that this discovery would uncover genuine disputes. **Baughman & American Tel. Co.**, 306 S.C. 101, 112,410 S.E.2d 537, 543 (1991) & **Haines v. Kerner,** 404 USS 519: (1972) Rule 56 (c)(1)(b) (2)(3) (d)(1)(2)(3) (e)(1)(2)(4) (h), & subdivision (c)(1)(b), 37 (a)(3)

39. **Tran. p. 5,** 1. thru 20. Judge Dennis repeats with bias and after the Plaintiff

agreed the first time, he continues to demonstrate his bias towards the Pro se Plaintiff that began on 7-30-14. Plaintiff also stated Mr. Davis was trying to confuse the court and then Judge Dennis stated "I'm not confused at all." Appellant submits he made a mistake, because he had the file when he stated he appreciates Plaintiffs position. Plaintiff also submits Judge Dennis was mistaken because Defendant didn't respond properly with his ordered supplemental request & again he was displaying inadvertence. Rule 60 (b)(1)(3) & 37 (a) (3), 56 (c)(1)(a)(b) (c)(2)(3) (d)(1)(2)(3) subdivision (c)(2)(3) (e)(2)(3).

40. **Tran p. 5,** 21. thru p. 6, no. 6. Judge Dennis denied Plaintiffs motion even after disclosing the Defendant had not returned the supplemental discovery Judge Dennis had ordered. Therefore Judge Dennis erred when he failed to ask the Defendant why didn't they return his ordered supplemental discovery properly and then deny their motion because it was premature. Rule 56 (d)(1)(2) (e) & subdivision (c)(1)(e)(2)(3) & 60 (b)(1)(3)(4)(6)(d)(1)(2)(3), subdivision 37 (a)(3) (c)(2)(3) (e)(2)(3) & 26 (b)(1).

41. **Tran. p. 6**, no.8-20 where Judge Dennis erred when he failed to understand that discovery is the major ongoing issue in this case, other than Judge Dennis being confused about what has transgressed during these hearings concerning his order and unproduced production that proved 100% Knology owned the lines. Judge Dennis tells Plaintiff he needs to file a motion to produce, that he already filed on 6-10-14 & Admit on 6-16-14 Charleston County Court of Common Pleas Index when Judge Dennis heard Knology's compelled case on 7-30-14. Judge Dennis was confused and made a mistake by ordering

the Plaintiff to submit a supplemental request which was an absence of attention and inadvertence. 60 (b)(1) & 56 (b)(c)(3) (d)(1)(2)(3) (e)(1)(2)(4) subdivision (e)(2)

42. **Tran. p. 6**, L. 11. thru p.7, L. 12. Defendant discloses the letter from his 2nd MSJ Exh F. where the Defendant admitted Plaintiff was ordered to supplement and they were never answered properly. Mr. Davis admits in his E-mail that he would be happy to respond to supplemental discovery, but otherwise I referred him back to our original answers from July. Again, Judge Dennis errs when he fails to ask to see the evidence that the Plaintiff was referring to which was his orders from 7-30-14 and this was an issue, because he failed to continue the case after he was notified of the improper discovery tactic by the Defendant that denied Plaintiff to plead his case with the ordered discovery. Motion was premature see **Frederick Hart & Co. Inc. v Recordgraph Corp**. 169 F.2d 580 (3d Cir. 1948): **United States Kolton T/a v Halpern,** 260 2d 590 (3d Cir, 1958) & 60 (b)(1)(3 & Rule 56 subdivision (c)(1)(2) (e)(2)(3) & Rule 6 (b) 37 (a)(3)

43. **Tran. p. 7,** 10-21 Judge Dennis again stating that the Pro se Plaintiff hasn't filed a motion to compel & Plaintiff responds that he had before July 30.th Then Judge Dennis states angrily; "Now, be careful what you're saying" and he looked into his computer for the first time, because apparently he had relied on what Mr. Davis had stated twice was fact, when he said "believes." Appellant submits the lower court is confused because his statement was correct and Judge Dennis was wrong while he was again engaging his contempt & bias towards the Pro se Plaintiff. Inadvertence 60 (b)(1)(3) 56 (c)(1)(a)(b) (3)

44. **Tran p. 7,** L. 22 thru p. 8, L. 1-17 Just before Plaintiffs motion to compel hearing on July 30th 2014, for the compelled to answer Incomplete and Evasive Admissions and Production, see Plaintiffs Mot. to Recuse p.2, para 3 & Plaintiffs 2nd MSJ & Exh. A-J. Mr. Davis was finally contacted about returning the production request and tries to evade answering the supplemental request. 60 (b)(1)(3) 56 (c)(1)(b) (d)(1)(2)(3) 37 (a)(3) & **Baughman v American Tel. And Tel. Co. (1991)**

45. **Tran. p. 8,** 18-25 Judge Dennis again errs when he makes another confusing statement "Then you need to be specific as to what it is you think that he should give you" which is what Plaintiff he ordered on 7-30-14 and then states; "you haven't done that" and now exercising bias towards Pro se by stating firmly; "I'm telling you that your going to file a supplemental request that says I want these" "not just give me all documents." Judge Dennis doesn't realize he has already ordered Plaintiff to do this on 7-30-14 and this is exactly what the Pro se had requested. Again he is displaying bias and inadvertence 60 (1) and therefore [A] judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to, instances where he has a personal bias or prejudice against a party. See **Murphy v Murphy** 319 S.C. 324, 461 S.E.2d 39 (1995). A judge's impartiality might be reasonably questioned when his factual findings are not supported by the record.

46. **Tran p. 9,** thru p.10, #7 Plaintiff submits he followed Judge Dennis's Order and he should have realized he had made a mistake and this was an ongoing dispute. He again

gets rude with the Plaintiff when he states firmly "right now" and because of his bias he abused his discretion. See; tendered; Plaintiffs 2nd MSJ, Exh. G-J. See inadvertence and 60 (1)(4), 56 subdivision (e)(4) also **Black v Lexington School Dist. (1997)** & Plaintiffs motion to compel & 2nd MSJ. Exh. B,C, D, E.

47. See Plaintiffs 2nd MSJ Exh. B, Admit 1. where Knology admits their lines were connected to units A & B and at this time they were unable to determine if their lines were running across the public right of way. Judge Dennis erred when he failed to realize the Defendants new photo that was submitted in the next to the last page of their memorandum in support for MSJ, and Appellant's Exh. G was Defendants new evidence that proved they were in the right of way after 6-21-12 and was submitted to create an alternative defense. The photo was taken in the opposite direction of the Plaintiffs photo and now Comcast's single line running directly across the right of way is now much closer and is visible and partially buried, compressed into the ground, undisturbed and is irrelevant. It was coiled in the direction of the unknown Knology representative taking the photo and was also coiled undisturbed in the direction the Plaintiff was walking from. Obviously Mr. Powell's foot could not and did not make contact under the line and then tightened enough to cause him to violently strike the ground.

48. Knology's 2 cable lines were not compressed into the ground and were hazardous because they were in fact disturbed and this photo does prove it was taken after 6-21-12 because Mr. Powell's wife and daughter took their photo on 6-22-12, before contacting

Comcast and then Knology. Mr. Powell and daughter met with 2 Comcast representatives who determined the single line running towards the adjacent attorney's office was theirs. Then Comcast stated they would have a crew come out the next day to remove it because there wasn't any obvious danger or concern, because it was compressed into the ground by local individuals walking through the right of way. Therefore the Comcast line was not considered as hazardous as the 2 Knology unburied cable lines running about 30 feet up the right of way by busy Folly Road and then Knology's manager Lee Endicott was contacted about the accident by Mr. Powell's wife.

49. Therefore Judge Dennis erred because he failed to see his own inadvertence and his failure to recognize the facts when he read the Defendants memorandum when the Plaintiff was denied his right to read it and submit his argument during this MSJ hearing. Plaintiff wasn't allowed a full & fair opportunity to complete discovery and to be able to see & use their new photo during the MSJ hearing and see Production 16. of Plaintiffs motion for reconsideration p. 7 and 12. on P. 5. and Prod 7. Exh S.

Plain 2nd MSJ p. 2 — Admit 10; After Knology or subcontractor was notified about the trip and fall injury of Mr. Powell the lines were removed.

RESPONSE; The cable lines were removed some point and time after the date of the alleged injury.

(note; their lines were removed after they were notified and their new photo was also taken after 6-21-12)

Prod 16 . Dates of when Knology or contractors were on the property at 930 Folly Road from 6-1-12 to 6-25-12.

RESPONSE; No Defendant employee visited the property between 6-1-12 to 6-21-12. Defendant reserves the right to supplement or amend this response.

50. Appellant submits attorney Benjamin Davis intentionally responded with an untruth by changing the date in question 25th to 21st purely to pursue his pattern of evasive responses and tactics that were revealed by their new photo that proved they were on the right of way to remove their cable lines. See Rule 60 (b)(1)(2) inadvertence, 56 (h) subdivision (c)(1)(a)(b) (e)(2)(3) 37 (a)(3) and **Baughman v American Tel. and Tel Co. (1991)**

51. Tran. p. 10, L. 1-25, Plaintiff acknowledges he mailed his supplemental requests on 2-20-15 and he had not received a proper response again. Therefore at that time Judge Dennis erred, because he should have continued the MSJ. It was premature and Judge Dennis with bias is telling Plaintiff to file the same motion to compel that was already compelled and Judge Dennis erred because it was his order to supplement and it was in his hand. His laptop was open and in front of him and the motion to compel was listed on the Charleston Clerks Index and he had presided over the compel hearing on 7-30-14. This was inadvertence and a mistake. 60 (b)(1)(3), 56 (c)(3)(d)(1)(2) & subdivision 37 (a)(3) where an incomplete or evasive answer is to be treated as a failure to respond and true.

52. Tran. p.12, L. 1-6, Judge Dennis erred and he was also confused, because Plaintiff only submitted one memorandum on 12-9-14 over 5 months before this MSJ

hearing & Tran p. 22, L. 3-4. Plaintiff submits Judge Dennis failed to pay attention to the actual progress and procedures that have occurred during the MSJ hearing. See 60 (b)(1) Inadvertence.

53. **Tran. P. 12**, L. 12-25, thru p.13, L. 1-19 the Defendant states they weren't guilty of negligent supervision, because the incident didn't take place on property they owned & therefore didn't owe a duty to the Appellant. Appellant submits by law they owed a duty; Ref the above #20 & 22. & below 55. "if you installed the cables, you are responsible" Judge Dennis erred because he failed to remember his own statement during his ruling. **Hurst v East Coast Hockey League Inc. (2006)** of Plain. mot. for reconsideration. p. 10

54. **Tran p. 14**, L. 18-25 thru p.15, L. 1-11 is where Defendant admits that there is a genuine dispute, because there's a chance the lines belonged to Knology and Judge Dennis submits this case is about the issue of whether Knology buried their lines and installed them properly. Judge Dennis erred because Plaintiff had submitted evidence in his complaint and in his 2nd MSJ where Knology intentionally failed to acquire the required Encroachment Permit and they also violated the following laws & ordinances. Plaintiffs 2nd MSJ bottom of p. 4-5 & Exh. K & Exh. J of the Plaintiffs motion for reconsideration p.8. & Plain. motion to compel p. 4, no. 14, S.C. Code of law 58-12-70 & Plaintiffs motion for reconsideration p. 8, 9, 10, 58-12-10, 50, 70 & 58-12-50, 310 (e)(2) S.C Code of Ordinances Section 30-151 & 154 and 56 (c)(1) because Defendant disputed their own denial the lines were theirs and their negligence was the most likely cause. See

Plaintiffs motion for reconsideration p. 10, **Ned v Hertz Corp.** 356 So. 2D 1074 (La. App.4 Cir. 1978).

55. **Tran. p. 15**, L. 1 thru p. 16, L. 5., Judge Dennis states "if you installed the cables, you are responsible and again Judge Dennis erred because he failed to recognize the intent by their employees to not bury the lines because of the pressure to finish the job that day and Defendant submitted the evidence they contracted 2 cable lines to units A&B & the Plaintiff tripped over their lines in the right of way that was connected to Units A & B & Def. admitted they were theirs in Plain Motion for recon. Exh H, no. 12 and discovery Admit 1. Exh B of Plain. 2nd MSJ p.7 & Exh. H, no. 6, 7, 8, 11 & Exh. J, no. 1, 2, 7, 10, 12, 15. This was a dispute and Judge Dennis failed to see the progress of the ownership issue after multiple statements by Defendant and the discovery submitted in Plaintiffs motions & memorandums were an issue along with Judge Dennis's mistake of inadvertence. See 60 (b)(1)(4), mistake of inadvertence, **Baughman v American Tel.** and **Tel. Co (1991) & Earle v Mcveigh (1875).**

56. Judge Dennis made a mistake when he didn't deny the motion because Defendant just admitted their original accounts A&B were connected to their lines and he also stated the lines potentially could be theirs. But their records show because of ASAP there was a dispute of whether they performed their duties properly and Appellant submits this is still an ongoing genuine disputable issue. **Tran. p. 14**, L. 1 thru p.16., L. 5. & below p. 74 where again Judge Dennis erred because of Admit 2., where they BELIEVE their lines

were buried properly.

57. **Tran. p.16,** L. 14-25 thru p.17, L. 1-13 Transcript is wrong because Plaintiff stated Knology did not acquire a permit and Judge Dennis is either confused on L. 6 & 7 or Transcript was wrong. Judge Dennis makes a mistake by not questioning the law the Defendant broke, which proved Defendant did in fact exercise intent and owed a duty to Mr. Powell. Also the SCDOT would have discovered Knology failed to bury their lines in the right of way, during their inspection.

58. SCDOT didn't know they had to come to the site and inspect the digging and burial of the lines, to ensure safety. This work was never inspected and this was in fact gross negligence and an issue concerning laws and ordinances broken by Defendant. Judge Dennis erred when he failed to ask one question concerning the violated permit and he didn't care Defendant had broken a law that makes them liable for any injuries caused by their intentional negligent act to evade inspections. 56 (3) 56-5-480 & South Carolina Court of Laws Rule Section 58-12-310 (e)(2) 58-12-10, 58-12-50, 58-12-70, 27-3-60, 27-30-15 & Plaintiff's motion for reconsideration Exh. O

59. **Tran. p. 17,** L. 14-19 thru p. 18, L. 1-4, Plaintiff has submitted multiple times back and forth with Judge Dennis about the discovery issue and that was why Plaintiff wasn't able to prove 100% the lines belonged to Knology. Judge Dennis again doesn't want to hear about the improper responses even though he stated about an hour earlier in another discovery hearing that he was going to shake up Columbia. 56 (C)(1)(a) (3)

(D)(1)(2)(3) & 37 (a)(3).

60. **Tran. p. 18.** L. 5. thru p.19, L. 1-8 Plaintiff tries to submit evidence that proves 100% Defendant owned the cable lines, because in their work order it never explained how they figured out where the sprinkler system was running through the front yard and how they figured out where to dig through a right of way and avoid pipes, electrical wiring without acquiring a SCDOT encroachment permit. **Tran. p. 18**. L. 12, p. 19. L. 6, Plaintiff is interrupted twice so he is unable to make his argument because Judge Dennis asks questions that changes the subject while Plaintiff is trying to submit evidence of the broken laws and ordinances violated. See the Plaintiffs Motion for Reconsideration Exh. O. & Plaintiffs 2nd MSJ, p. 4 & 5, Exh. K. Judge Dennis displayed inadvertence 60 (B)(1)

61. **Tran p. 19,** L. 3-20 Judge Dennis made a mistake by interrupting Appellant before he finished submitting his evidence "it doesn't say anything about what they did to" again Appellant wasn't able to finish with; legally discover where the sprinkler system was before they began digging 100 feet through the front yard and about 30 feet in the right of way, which was a duty to be performed by the commercial cable company while abiding by the local and state laws. 60 (b)(1) inadvertence, 56 (e) & sub. (e)(4).

62. Then Judge Dennis interrupted with "What evidence do you have that this is their cable" and if he hadn't allowed Defendant to evade answering his ordered supplemental request the Plaintiff could have responded with Defendants the new photo that proved they were on the right of way after 6-21-12 and Plaintiff could have also responded with

the Plaintiffs newly discovered E-mail Exh. H. from Knology representative Jason Tant that stated "I also want you to know that we immediately went out and removed the lines except for one, it was a Comcast line feeding the lawyers office." which was sent to Mr. Powell on 6-28-12. But Pro se did not discover he had this E-mail until after the Order for Summary Judgment was signed and this would have proven 100 % the unburied cable lines belonged to Knology. If Defendant had responded properly the second time or been ordered to answer the supplemental request 4. during the MSJ hearing, ref. below on p. 74 and then ordered the Defendant to answer admissions 15. which was submitted in the Plaintiffs 2nd MSJ, Exh. G & H, no.7, 8 & 11 and Exh. I & J, no.1 & 15 that would have completely answered Judge Dennis's question. Therefore, Plaintiff wasn't given a full and fair opportunity to respond with the ordered supplemental request and responses from the Production requests. Also the Defendant never submitted any evidence from their old accounts units A&B and the owners of the Folly Oaks Center that any other cable company ever had accounts with units A&B. 56 (c)(3) (d)(1)(2)(3)(e)subdivision (e)(2) 37 (a)(3) & 60 (b)(1) Inadvertence

63. Judge Dennis erred when he knew Plaintiff didn't have Defendants memorandum and he had one. During the MSJ hearing Judge Dennis stated; **Tran. p. 11, 17** thru p. 12, L. 6 "You did and your memorandum is incorporated fully for the purposes of review should that become necessary" and furthermore he read & saw the new evidence before the hearing and Plaintiff wasn't allowed to. Also Judge Dennis made a mistake when he

wasn't paying attention or didn't care about Defendants evasive tactics that caused Pro se to be at a disadvantage during the hearing. The Defendants new photo only proved they were on the right of way to remove the cable lines that belonged to Knology because the photo had to be taken after 6-21-12 and after Knology manager Lee Endicott was notified by the Plaintiff he had been injured. Rule 60 (b)(1) inadvertence & 56 (d)(1)(2)(3), (e)(1) also **Earle v Mcveigh (1875)** & **Baughman v American Tele. and Tele. Co. (1991).**

64. If Appellant hadn't been denied his right to read the memorandum he would have been able to submit his argument that the Defendant's new photo only proves they were on the right of way after 6-21-12, even though Defendant stated they hadn't been there since 2009. Their photo proved their liability because of their negligence and this was an attempt by Knology to confuse & cover up the facts. Plaintiff wasn't able to submit this evidence to end the dispute of who owned the lines. Furthermore Judge Dennis allowed this misconduct & fraudulent tactic by Attorney Ben Davis to continue all the way through the MSJ hearing, pursuant misrepresentation & inadvertence. 60 (b)(1)(2)(3), 56 (h)

65. If Plaintiff would have been permitted to respond to where Defendant states in their memorandum in support of MSJ on p. 6, where they had no control over the cable lines at the time of the fall, is because they had abandoned their lines years earlier. The Defendant stated they didn't have permission to enter the right of way to perform any activities or warn of the cables. Appellant submits that no one needs permission to walk beside Folly Road and through the right of way and the only reason Knology would not be able to repair or perform an activity legally was because the never obtained the lawful Encroachment Permit to bury their lines and Knology didn't need permission to walk on the right of way to put up a warning sign.

66. The Folly Oaks Center never sold Units A & B which were attached to the other units under one roof and the property sold was a parcel of land on the far left side edge of the 930 property and the front of it was Folly Road with the right of way still owned by the county, so change of ownership was irrelevant. Defendant stated; neither identified nor produced any admissible evidence to support allegations that Knology either received or responded to complaints pertaining to the unburied cable or otherwise visited the right of way or the adjacent property at 930 Folly Road since 12-1-2009 when it last had an active account at the location. If Judge Dennis hadn't allowed the Defendant to evade discovery again, the Plaintiff could have submitted the Defendants new photo that proved they were on the property after 6-21-12. Furthermore if Plaintiff hadn't been denied proper

discovery of production he would have submitted the Jason Tant E-mail Exh H and then this MSJ would have been denied because it proved 100% Knology owned the lines. Therefore, because of the mistakes by the Court the Plaintiff wasn't allowed to set forth specific facts to show there is a genuine issue for trial pursuant 56 (e)(f)(g).

67. Mr. Davis also stated Plaintiff only alleges that 2 of the unburied cables belonged to Knology and "makes no assertion to the third" Plaintiff wasn't able to respond with the facts about the ownership of the other cable line that was in the Defendants new photo. Plaintiff had stated in his complaint on p.1 , para 3 "After investigating, the "2" Knology unburied cables lines" which means Plaintiff had a reasonable reason to contact Knology because Mr. Powell and his daughter had met with Comcast Cable Co. & after their investigation it was determined the single line compressed into the ground because of pedestrian foot traffic stepping on it, was theirs. The line was connected to the lawyers office next door and it wasn't stretched out in the direction the Plaintiff fell which is the other side of the line and furthermore this was because it was almost completely buried, undisturbed and Plaintiffs foot was unable to step under the line and trip to the ground. The 2 Comcast representatives stated they would send someone out tomorrow to remove their line and furthermore Knology took their photo before Comcast removed their line after 6-21-12.

68. **Tran p. 19,** L. 9-16 Plaintiff has notified Judge Dennis that there was a production request for all documents concerning Knology offering a settlement for his injuries,

which is part of the Plaintiffs complaint about not receiving the discovery that was requested on 2-20-15. Judge Dennis erred when he failed to ask what documents and realize the motion was premature. 56 (b)(1)(4)(6) (c)(3) (d)(1)(3) 60 (b)(1) inadvertence.

69. See production request no. 6. which was asked in Judge Dennis's ordered supplemental request in Plaintiffs 2nd MSJ, Exh. H & no. 11. to respond to when they came to property to remove the lines & Plaintiff could have submitted Defendants new evidence submitted in their memorandum in support for MSJ that does in fact prove they were in the right of way when their cable lines were removed. 60 (b)(1)(3) mistake, inadvertence, misconduct and misrepresentation. Also, SCRCP 56 (e)(f)(g) & 37 (a)(3).

70. **Tran p. 19.** L. 17-25 Judge Dennis again hears about the supplemental request, that wasn't answered properly and then Judge Dennis errs when he asked "remove the lines?" which would have been answered during their responses and would have included the Jason Stant E-mail. Also Judge Dennis is questioning when their lines were removed, which shouldn't have been a dispute. Plaintiffs 2nd MSJ p.2, Admit #10, Exh C-E & J; Response; "The cable lines were removed at some point and time after the date of the alleged injury." Note; Defendant did not deny they were notified and never explained how they knew the lines removed. Only Knology knows exactly what time they were on the right of way after 6-21-12 to remove their 2 cable lines and who removed them. See 2nd MSJ, Exh. B., Admit 1. and p. 3, Production 7. Also, Exh. J., 10. Again Judge Dennis failed to realize the genuine disputes and require Defendant to properly answer his

ordered supplemental request before by denying their motion, because it was premature. 56 (b)(c)(3) (d)(1)(3)(f), subdivision (c)(1)(b) (e)(2)(4).

71. Appellant also submits Judge Dennis admits he thinks Knology owned the lines by the way he asked "Removed the lines?" and he should have known from discovery they removed their lines after the accident, because the relevant evidence was submitted in the Plaintiffs 2nd MSJ. See p.7, Admit #1 where Defendants admits their lines were connected to units A & B and see Exh. B., Exh. C. #2, belief their lines were buried and their new photo that he saw in their memorandum that proved 100% Knology was on the right of way after 6-21-12. Rule 60 (b)(1) Inadvertence, because Judge Dennis was unaware of the relevant facts and issues concerning motions and discovery. Also Rule 56 (c)(1)(a)(b) (c)(3) (d)(1)(2)(3) (e)(1).

72. **SUPPLEMENTAL ADMISSION REQUEST**

Mailed on 2-20-15 to respond by Plaintiffs
Motion for 2nd MSJ & Exh. I & J

#1. ADMIT; your cable lines were connected to the commercial building, the Folly Oaks Center located at 930 Folly rd. and running through the front yard and across the pedestrian right of way.

Originally admitted they would supplement.

#2. ADMIT; these "2" unburied cable lines were supposed to be buried.

Originally stated they "believed" their lines were buried, right to supplement & never did

#7. ADMIT; that at least one of these unburied cable lines was lying on top of the ground for at least "2" months.

Originally denied and reserves the right to supplement and never did.

#10 ADMIT; After Knology or subcontractor was notified about the trip and fall injury of Mr. Powell, the cable lines were removed.

Knology's first response was the cable lines were removed some point and time. Also they didn't deny they removed the 2 lines and the new photo proves they were on the right of way after the accident.

#12 ADMIT; according to local laws and procedures these 2 unburied cable lines were supposed to be buried.

Therefore, Appellant submits that this is a genuine dispute because Respondent only "believes" their cables were buried and Judge Dennis erred because he didn't allow discovery to continue.

#15 ADMIT; the cable lines your technician or sub-contractor removed from 930 Folly Road after 6-21-12 belonged to Knology.

RESPONSE; ? Was never answered and was a genuine issue of dispute and Judge Dennis should have ordered this Admit and other supplemental discovery to be answered during the MSJ hearing or the motion should have been denied after Mr. Powell tendered it to Judge Dennis, because this proved the Defendant had already failed in their initial burden to show the absence of dispute of material fact when they intentionally didn't respond properly. Also the never seen production of official state, county and city laws they violated, how they determined where the underground sprinkler lines were, who and when did they remove the lines after 6-21-12 and also the E-mail from Knology Inc. representative Jason Tent that proved 100% Knology owned the 2 unburied cable lines.

Rule 56 (d)(1)(2)(3) (f)(g) subdivision (c)(1)(e) (3)(4), 60 (b)(1) inadvertence 37 (a)(3) and **Baughman American Telephone & Telegraph Co. (1991), Black & Lexington**

School Dist. (1997), Earle v Mcveigh (1875)

73. SUPPLEMENTAL PRODUCTION REQUEST TENDERED TO JUDGE DENNIS DURING MSJ HEARING

Reference Plaintiff's 2nd MSJ, Exh. G & H

4. All documents of Mr. Powell's taped conversations, letters or correspondence of any of any kind with Knology, anyone, including your insurance company.

Appellant submits proper response would have included E-mail from Jason Tant.

6. All documents concerning Lee Endicott at your Charleston Center who agreed to pay Mr. Powell, in front of his wife his Doctor bills and was told he would have to wait several weeks to receive the check.

7. Individuals names who actually repaired, removed or buried the "2" unburied cable lines at 930 Folly Road on or after 6-21-12.

8. Respondent stated they would supplement this response upon reaching it's conclusion and Appellants submits Respondent never did even though they were on the property and took a photograph before they removed their lines, that reveals issues. Judge Dennis erred when allowing this improper evasive manner to continue during the MSJ hearing after Plaintiff stated Defendant will not answer Discovery, which included his ordered Supplemental request which was in his hand while pressuring Plaintiff to answer questions that should have been posed to the Defendant.

11. Defendant never answered when they came to the property after 6-21-12 and because of the improper decision by Judge Dennis, Defendant was permitted to evade answering the questions he expected Plaintiff to answer during the MSJ hearing. The Plaintiff was unable to do so, because Defendant was allowed to not answer properly.

15. Defendant stated it was unreasonably burdensome and they would make available for inspection and copying the records at their office, which was never allowed. Again Judge Dennis made a mistake when he did not know Knology's procedures and safety standards that they were legally supposed to abide by concerning setting up, burying, connecting, maintaining and inspecting cable lines on commercial property pursuant state, county and local laws. Plaintiff could have submitted these violations of state and local laws in his Response to the Memorandum, if he had been permitted. Judge Dennis failed to deny because of all of these unknown facts and genuine disputes.

74. **Tran. p. 20**. L. 1-25 Judge Dennis erred because apparently he didn't read the first page of the Plaintiffs complaint before the hearing and he should have read it after the Plaintiff stated it was in his complaint instead of him incorrectly stating "No, it's not," when it was. Then the Plaintiff could have directed Judge Dennis to see this meeting took place in his ordered supplemental production request # 6, located in Plaintiffs memorandum for MSJ p.6, his 2nd MSJ supplemental request Exh. H., no. 6. that were asked under oath by the Defendant's attorney. Therefore the Plaintiff did not need an affidavit to prove to the lower court this meeting took place and an offer of a settlement was made. 60 (b)(1) mistake by Judge Dennis when he failed to be familiar with Plaintiffs complaint and he wasn't paying attention. This was also inadvertence and see Rule 56 (c)(3) (d)(1)(3) & 28 USC 1746 a formal affidavit is no longer required.

75. Plaintiff was very surprised that Judge Dennis would even make the mistake of

asking for an affidavit since the Defendant had already stipulated that it had happened in their production response # 6 by stating "the amount in controversy." Furthermore Judge Dennis had this evidence in front of him and after Appellant stated "my wife called the next day after I was injured" Judge Dennis erred because he interrupted and he was incorrect when he stated; "Well, I'm sure you don't." See complaint p. 1 para 3 and Judge Dennis has made a mistake and continues about an affidavit that wasn't necessary and rules harshly, because of his mistake. Also the Plaintiff requested all the documents to resolve this dispute concerning the meeting with manager Lee Endicott, which turns out to be a crucial point caused by Judge Dennis and then he ruled improperly. 60 (b)(1) mistake and inadvertence because Judge Dennis demonstrated his bias towards the Pro se Plaintiff and furthermore he revealed his absence of attention and lack of respect for the Pro se to look at his Complaint on his computer that was in front of him, to establish the Plaintiffs statement was correct. Rule 56 (d)(1)(2)(3) (e)(1) & 60 (b)(1). **Tran p. 20** L. 1-25.

76. **Tran. p. 21**, thru p. 22 1-2. Plaintiff discloses the information uttered by Mr. Davis concerning the manager Lee Endicott and again Judge Dennis is notified Defendant never returned the documents and why he was offered the money, then Judge Dennis states "Okay." He erred because he didn't ask one question about why the monetary offer was made by the Knology manager Lee Endicott who is now not an employee and why didn't the Defendant properly respond to his ordered supplemental request for the documents. Therefore this was a genuine dispute overlooked by Judge Dennis while he

demonstrated absence of attention and care while carelessly effecting the Plaintiffs rights to have a fair & impartial hearing, because he can't prove the cable lines belonged to Knology 100% without the production and Judge Dennis erred because these are genuine disputes that prove their admitted liability and the improper procedures that were allowed by Judge Dennis pursuant Rule 60 (1) inadvertence & Rule 56 (c)(3) (d)(1)(2)(3)

77. Also the Plaintiff was denied his right to submit another statement in his behalf after Judge Dennis stated "Well I'm sorry about that" when it was his absence of attention bias throughout the hearing and that caused Pro se to be apprehensive and confused while Judge Dennis continued to make mistakes concerning proper procedures of discovery. This was inadvertence 60 (b)(1) and see Rule 56 (d)(1)(2)(3) (e)(1)(4) subdivision (e)(4) & **Haines v Kerner 404 USS 519, (1972).**

78. **Tran p. 22,** 3-24 Judge Dennis never asked earlier which Production request was this, which proves Plaintiffs argument and he should have read #6 in the Plaintiffs complaint, memorandum, 2nd MSJ, motion for reconsideration & motion to recuse. He is now badgering Pro se about a deposition to prove this meeting took place and states "no statement" and "there's no statement other than your statement, correct?" The Plaintiff is so confused and apprehensive he responds; "I think I've got it in one of my production questions" and then Judge Dennis responds with bias and he didn't allow the Plaintiff to submit his argument of proof that it was a sworn statement and Judge Dennis should have known this was a sworn statement. This was inadvertence 60 (b)(1) 56 (f) and (g). The

Plaintiff had set forth specific relevant facts that are genuine disputes. 56 (c)(1)(a)(3)(4) (d)(1)(2)(3) (e)(1).

79. Plaintiff tries to explain the meeting again and Judge Dennis again says "yes" but his demeanor means no, so Plaintiff after being apprehensive, frustrated and now confused just gives up and agrees with Judge Dennis by saying "no" to his own factual sworn statement. Then Judge Dennis proves he is confused and errs because he cites a golf ball case where a lawyer swore he talked to an expert which has nothing to do with the Plaintiff and his wife meeting with the Defendant to acquire a check to pay for his Doctor bills. Plaintiff had proof this meeting took place by the Defendants sworn response "amount in controversy" and again Pro se wasn't allowed to argue his position and he should have been allowed more time for discovery. Inadvertence 60 (b)(1) 56 (e) (d)(2) subdivision (c)(1)(b). 56 (c)(1)(a)(3)(4) (d)(1)(2)(3) (e)(1).

80. Furthermore Judge Dennis made a mistake by disregarding this relevant evidence about the monetary offer and there wasn't a need for an affidavit and Plaintiffs position was supported by materials in the record and were discovered while under oath and even with Judge Dennis's mistake the Plaintiff still should have survive the MSJ because the formal affidavit was no longer required pursuant 28 USC 1746 & Rule 60 (b)(1)(4) inadvertence & Rule 56 (c)(1)(a), (3)(4), (d)(1)(2)(3), (e)(1), (f)(1) & subdivision (e)(2)(4) **Haines v Kerner (1972), Black v Lexington School Dist. (1997), Earle v Mcveigh (1875), Baughman v American Tel. and Tel. Co. (1991)** and **Hamilton v Miller (1991).**

81. The Plaintiff was never allowed to visit the Attorney's office to inspect their documents and retrieve the statements made by Knology's manager to their upper office about the incident and their financial offer to Mr. Powell. Also Plaintiff never received the documents about their Hartford insurance company representative Mr. Budkis who came to Mr. Powell's home for an interview to try to work out another settlement. Plaintiffs complaint p. 1 & 2nd MSJ p. 6, Exh. A, F, I, J and H no. 4.

82. Plaintiff submits Judge Dennis exercised a biased attitude towards him by his tone of voice, statements, manner, interruptions and rulings. He interrupted or prodded the Pro se 15 times and this caused him be apprehensive and also be confused. Also Judge Dennis didn't treat the Defendant in the same biased manner and he failed to hear all the Plaintiffs relevant evidence because of his abuse of discretion when refusing to hear Pro se's arguments. Judge Dennis's bias and inadvertence stopped Pro se Mr. Powell from submitting relevant evidence that supports his claim of how the lines were just illegally dropped on the ground and were eventually just abandoned by Knology. See; **Haines v Kerner** 404 USS 519; (1972) & **Black v Lexington School Dist. (1997)** & 60 (1)(3) inadvertence and the court allowed fraudulent tactics to proceed during the hearing, 56 subdivision (e)(4).

83. In the Order for granting Defendants motion for summary judgment is where the Plaintiff submits the Defendant states they never possessed, owned or had control over any right of way. But, because of laws Knology did in fact owe the Plaintiff due care in the right of way because of the evidence submitted. Ref. Prod. no. 6, 7, 11, 12, 16 and

Admit #15, along with Supplemental Requests for 4, 6, 7, 8 and 11, also state & local Law Sections 58-12- 10, 50, 70 and 310 (e)(2). Including Defendants failure to acquire the SCDOT Encroachment Permit and their new photo submitted in the Defendants Memorandum for Summary Judgment that proved Knology was on the property and removed their "2" unburied cable lines after 6-21-12. Pursuant Rule 56 (3), the South Carolina Code of laws Section 58-12-310 (e)(2), 58-12-50, 58-12-70, 58-12-10, 58-12-310 (e)(2), 56-5-480 27-3-60, 30-15 see Plaintiffs memorandum in support for MSJ Exh F-H &J and Encroachment Permit, see Plaintiffs motion to reconsider Exh O.

84. PROD. #12. The customers names and addresses of each unit at 930 Folly Rd. that the "2" unburied cable lines were contracted to. Exh Q of Plain. Mot. for Recon. DEFENDANTS RESPONSE; 930 Folly Folly Road, suite/Unit A: Customer: Staysmayer, Inc., c/o Staysmayer Properties service connected 12/1/09 by Knology technician Eugene Walker 930 Folly Road, Suite/Unit B Customer; Moms, Monkies and Mermaids Service disconnected 6/8/08 by Knology in house technician Eugene Walker.

85. Plaintiff submits the Defendant just admitted the unburied cable lines were theirs and the only way Defendant could answer with their units A & B is because they were on the property after 6-21-12 to inspect the side of the Folly Oaks building to see if the unburied cable lines were theirs and were still connected to units A & B. Plaintiff submits this was a genuine dispute and Judge Dennis made a mistake when he granted Summary Judgment after the Defendant had already admitted verbally to Judge Dennis

that the lines belonged to them & this admission of liability response to Production no. 12 and their admission "the only chance that they potentially could belong to Knology is this 2006 installation that our records show was performed properly." Also Judge Dennis responded "I understand that but it's an issue of facts as to whether it was performed properly, isn't it?" Therefore Judge Dennis erred when he granted SJ because Knology never submitted the documents that would have proven their lines were removed after 6-21-12, because they made a monetary offer and they admitted the lines were removed sometime after the incident. This is a genuine dispute pursuant 60 (b)(1)(2)(3) 56 (e)(f) See **Tran p. 14,** L. 7 thru p. 16. L. 5

86. Plaintiff submits the evidence speaks for itself, because Knology entered their new photograph they took in the right of way after the Comcast visit and after their manager was contacted by Plaintiff. Compare to Appellants photo Exh. A that was **taken** on 6-22-12. Judge Dennis erred because it was his mistake Plaintiff was denied his right to read Defendants new evidence in their Memorandum before the hearing and then demonstrate how exposed and hazardous the 2 Knology lines were. 56 (e)(f) and subdivision (h) also **Frederick Hart & Co. Inc. v. Recordgraph Corp.** 169 F.2d 580 (3d Cir. 1948): **United States ex rel. Kolton v. Halpern,** 260 F.2d 590 (3d Cir, 1958)

87. Furthermore, a judgment may not be rendered in violation of constitutional protections. The validity of a judgment may be affected by a failure to give the constitutionality required due process notice and an opportunity to be heard. **Earle v.**

Mcveigh, 91 US 503, 23L, Ed 398 (1875), See also Restatements, Judgments 4 (b). **Prather v Loyd**, 86 Idaho 45, 382 P2d 910. Because of Judge Dennis's mistake the Plaintiff was denied this evidence and if the Plaintiff had been able to tender the same E-mail from Knology representative Jason Tant Exh H. which was requested in Production and therefore the MSJ would and should have been denied. Furthermore, the Plaintiff eventually discovered he had overlooked this E-mail after he had filed this Appeal because he didn't own a computer. If Defendant had properly responded with discovery, Plaintiff would have submitted Knology's admission the 2 lines were their property during the MSJ hearing when Judge Dennis asked the Plaintiff on **Tran. p. 16**, no. 4-10. "What proof do you have that Knology is the person that put in this work, that installed the cables that caused the fall?" Also, **Tran p. 18**, no. 4-7. "What evidence do you have that Knology installed the cables that you tripped on?" Therefore their motion would be denied after submitting their new photo and E-mail.

88. The Pro se Plaintiff was in fact denied his right to acquire evidence from Judge Dennis's ordered supplemental request for production & admit and Judge Dennis failed to carefully observe the importance of the discovery for the Pro se, so he could prove 100% the 2 unburied cable lines were Knology's. Judge Dennis stated on **Tran p. 15,** L. 1-3, "I understand that, but it's an issue of fact as to whether it was performed properly, isn't it? Then Judge Dennis states on L. 15-17 "if you installed the cables, you're responsible. Are you not?" Therefore, this was a genuine dispute and this was inadvertence by Judge

Dennis when he granted the MSJ. 60 (b)(1) & 56 (d)(1)(2)(3) also **Baughman v. American Tel. and Tel. Co. (1991), Earle v. Mcveigh (1875), Black v Lexington School Dist. (1997)**

89. **Tran p. 15**, L. 4-11 Where Attorney states "But there's no evidence that Mr. Powell --- Mr. Powell hasn't shown any evidence to the contrary. There is essentially no evidence that the cables in the right of way belonged to Knology" Appellant submits Judge Dennis erred when he granted SJ when it was obvious that the Plaintiff had submitted a preponderance of evidence that revealed multiple genuine disputes and Judge Dennis stated he read it, including the following;

PRODUCTION REQUEST no. 12.
Plaintiffs motion for reconsid. Exh S
Plaintiffs mem. in support of MSJ p. 4

12. The customers names and addresses of each unit at 930 Folly Rd that the 2 unburied cable lines were connected to.

DEFENDANTS RESPONSE; 930 Folly Rd. suite/unit A. ; customer; Stasmayer, Inc, c/o Stasmayer Properties Services disconnected 12-1-09 by Knology Technician Eugene Walker. Also 920 Folly Rd. suite/unit B; customer, Moms, Monkies & Mermaids

Appellant submits Knology just admitted their lines were unburied and connected to units A & B and they didn't deny the lines were theirs. Also, Defendant never proved how they buried the lines and who, how and why their unburied lines were removed.

ADMISSION REQUEST 2.
Plaintiffs 2nd MSJ Exh. D

2. ADMIT; These 2 unburied cable lines were supposed to be buried.

RESPONSE; Defendant admits upon information and belief that the lines were installed properly

Appellant submits this "belief" is a genuine dispute because the Defendant never submitted any proof how they located the underground sprinkler system and how they actually buried the lines. Also Judge Dennis stated on **p. 14, L. 18 thru p. 15, L. 17 of Transcript** "If you installed the cables, you're responsible. Are you not?"

PRODUCTION REQUEST # 8

Plaintiffs 2nd MSJ p. 4, Exh. H

8. Documents of the names of the company or contractor who removed or buried the cable lines on or after 6-21-12 at Folly Rd. and documentation of work done that day.

RESPONSE; See Response no. 7. Defendant is in the process of evaluating it's records in an attempt to determine the information and documents responsive to this request.

Appellant submits this is a genuine issue because Knology wasn't sure they had buried the lines and the Plaintiff was never allowed to see the documents that may prove they actually buried the cable lines under their pressure to be buried ASAP today.

PRODUCTION REQUEST #16

Plaintiffs motion for reconsideration p. 7

16. Dates of when Knology or sub-contractors were on the property at 930 Folly Rd. from 1-1-12 to 6-25-12.

RESPONSE; No Defendant employee visited the property between 1-1-12 and 6-21-12. Defendant reserves the right to supplement or amend this response.

Appellant submits Attorney Ben Davis intentionally submitted an untruth by changing the date during his response purely to evade admitting that Knology was on the property after Mr. Powell's injury. The Defendant never supplemented or amended their response. Again, their new photo proved they were on the right of way after the 21st and then they removed their 2 unburied cable lines. 60 (b)(3), misrepresentation, misconduct and intrinsic fraud.

PRODUCTION REQUEST no. 7.

Motion for reconsideration p. 6.
Plaintiffs mem. for MSJ p. 4

7. The individuals names that actually repaired, moved or buried the 2 unburied cable lines at 930 Folly Road on or after 6-21-12.

RESPONSE; Defendant is in the process of evaluating it's records in an attempt to determine the information and the documents responsive to this request, and will supplement this response when reaching it's conclusion.

Appellant submits the Defendant never supplemented because they reached a conclusion when they discovered their lines weren't buried and then they removed them.

ADMISSIONS REQUEST no. 1

Plaintiffs 2nd request for MSJ p. 7

1. Admit you lines were connected to the commercial building Folly Oaks Center

located at 930 Folly Rd running through the front yard, up and across the pedestrian right of way.

RESPONSE; Defendant admits that it's cable line or lines were connected to the commercial building located at 930 folly Rd.

Appellant submits the Defendant admits the lines were theirs and they were unburied and crossing the pedestrian right of way.

ADMMISSIONS REQUEST 10.
Plaintiffs 2nd request for MSJ p. 2

10. Admit; After Knology or sub-contractor was notified about the trip and fall injury of Mr. Powell the cable lines were removed or buried.

RESPONSE; The cable lines were removed at some point and time after the date of the alleged injury.

Appellant submits the Defendant did not deny the unburied cable lines belonged to Knology or they didn't remove the cable lines that were still connected to their accounts, units A & B

90. Appellant submits he entered substantial evidence that raised genuine disputes to deny their motion and the Defendant knew at the time of their statement the only reason the Plaintiff hadn't submitted the evidence that proved Knology was the 100% owner was because they exercised misconduct, misrepresentation and withheld relevant discovery from the court and Judge Dennis erred when he allowed this to happen. See 60 (b)(1)(2)(3)(4) and 56 (c)(1)(a) proven by Plaintiffs electronically stored information,

Jason.Tant@knology.com E-mail Exh H which proves 100% the 2 unburied lines belonged to the Defendant who argued position wasn't factual and therefore disputed. Also, Rule 56 (c)(1)(b) (c)(1)(2)(3)(4) (d)(1)(2)(3).

91. See Rule 56, SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. **City of Columbia, supra** and the Third Circuit cases have taken the view that summary Judgment must be denied pursuant **Frederick Hart & Co. Inc. v Recordgraph Corp.** 169 F.2d 580 (3d Cir. 1948) **United States ex rel. Kolton v. Halpern,** 260 F2d 590 (3d Cir. 1958).

92. Appellant request his newly discovered E-mail evidence to be admitted and accepted pursuant 60 (b)(1)(2) because of the excusable neglect by the Pro se Litigant who originally requested to proceed with this lawsuit under In forma Pauperis. Because of the mistake of oversight by the Pro se who does not have legal aides, who doesn't own a computer and goes to the Charleston County library type his arguments. Eventually Pro se did discover the E-mail and he now submits this evidence. Pro se didn't realize he had genuine disputable evidence until after he had filed this Appeal. Rule 56 (d)(1)(2)(3) Plaintiffs arguments were "well pleaded" and considering the lack of discovery and the biased attitude by the lower court the motion should have been denied. **Haines v Kerner**, 404 USS 519, 1972. The Supreme Court ruled that the court shall allow procedural time for Pro se litigants. Also, Plaintiff would have been able to submit the same E-mail

during his 2nd motion for summary judgment motion, during his second MSJ hearing and during the Def. MSJ hearing if Judge Dennis had enforced proper discovery procedures during the supplemental request that was due before the 4-2-15 MSJ hearing. 60 (b)(1)(2)

CONCLUSION

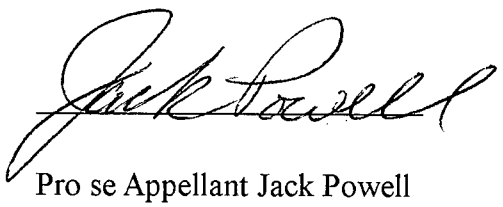
Appellant files this motion for his relief from judgment pursuant Rule 60 (b)(1) (2) (3)(4) because the order granting Defendants motion for summary judgment that was granted under circumstances contrary to a fair administration of justice, also because the lower court abused it's discretion by prematurely granting summary judgment because Judge Dennis exercised bias and inadvertence while he ruled improperly before, during and after the MSJ hearing by allowing the Defendant to engage in misrepresentation, misconduct, extrinsic fraud & he also allowed their fraudulent response in a discovery response to stand as fact while Judge Dennis exercised improper procedures by allowing his ordered supplemental discovery request go unanswered and unchallenged during the MSJ hearing and furthermore a claim arose out of the conduct that was brought to light by Defendants improperly submitted memorandum for summary judgment pursuant extrinsic fraud.

Furthermore the Pro se Appellant request the Honorable Court of Appeals to allow the newly discovered evidence be admitted, because of the Pro se's excusable neglect pursuant 60 (b)(1)(2) and because the evidence revealed by the Knology E-mail that should have already been part of the record, and proved their 100% ownership of the 2

unburied cable lines which was the number one genuine dispute during the two MSJ hearings on April 2nd 2015.

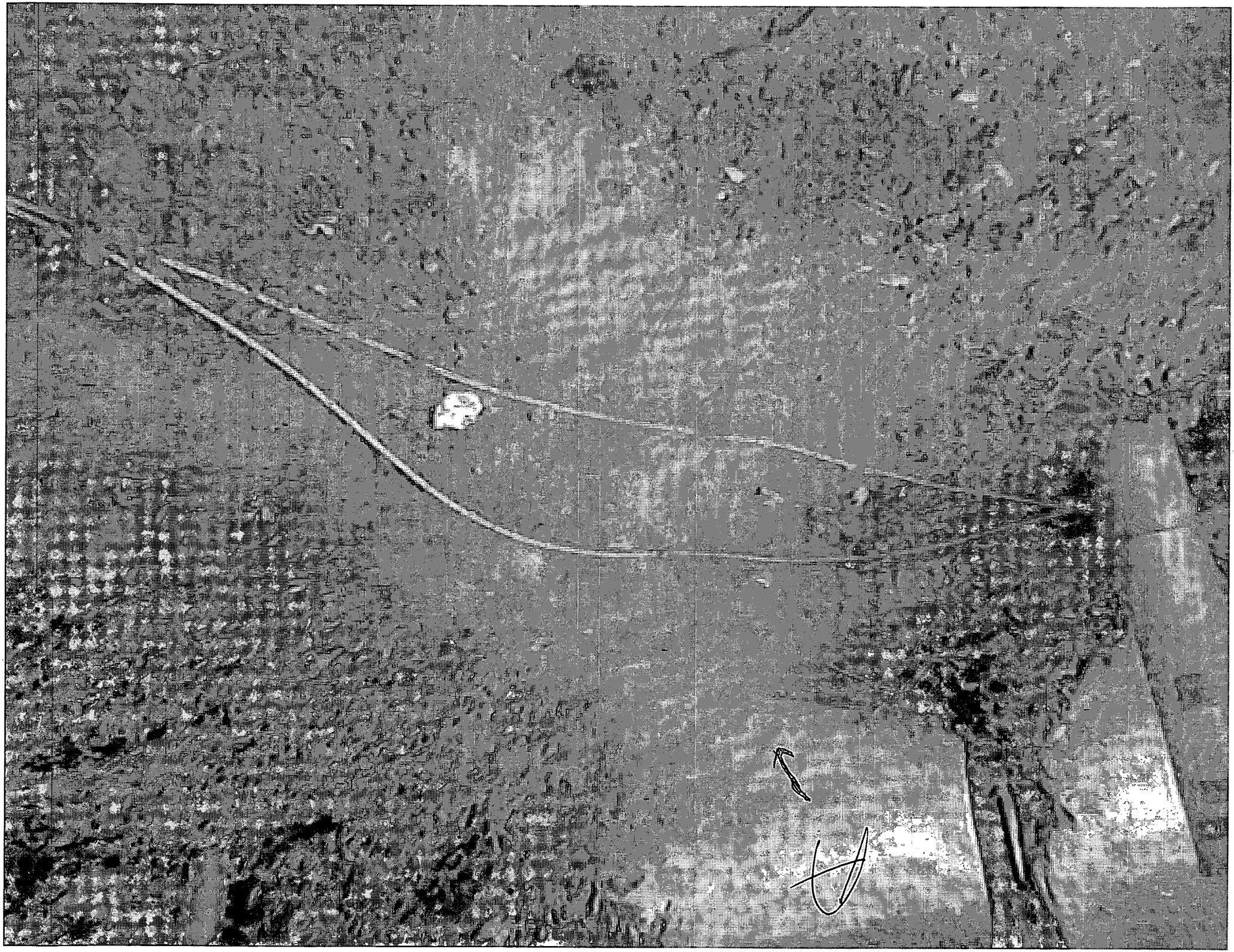
Therefore, Appellant submits he had entered more than a scintilla of evidence and he was denied his opportunity to be heard multiple times during the MSJ hearing. **Handcock v Mid-South Mgmt. Co. (2009)** and **Baughmen v. American Telephone Company (1991)** and Appellant also request this motion for Relief of Judgment to be granted because of the state, local laws and public utilities violated while the Lower Court failed to recognize these genuine disputes.

Signed & mailed on 12-13-2016



Pro se Appellant Jack Powell
1402 Camp Road Unit 8-A
Charleston S.C. 29412
(843)952-4762

cc. V. Claire Allen
Benjamin Davis



B

PAIN

Technologist: JOHN DAVIS
Radiologist 1: RUSSELL CHAPIN
Radiologist 2: SHREE SUBEDI
Radiologist 3:

Transcribed by: Tech IntTalk
Date Dictated:
Proxy Signer:
Authenticating Radiologist: RUSSELL CHAPIN
Date Authenticated: 06/22/2012 08:38

EXAMINATION: KNEE 06/21/12 23:38:00

ACCESSION NUMBER: 6717631

INDICATION: PAIN

COMPARISON: None

FINDINGS: Frontal and lateral views of the right knee demonstrate severe 3 compartment osteoarthritis with osteophyte formation and joint space narrowing worst in the medial compartment. Evidence of prior surgery with U shaped metallic device overlying lateral condyle. Chronic loose bodies are seen. No joint effusion. No acute fracture.

IMPRESSION:

Severe 3 compartment osteoarthritis worse medially. No acute fractures.

Key findings discussed with emergency room physician 6/22/2012 12:24 AM

VOICE DICTATED BY: Dr. Shree Subedi

C

acute pain due to fall, loc+, c spine tenderness
\
\
Technologist: BETH POTTS
Radiologist 1: RUSSELL CHAPIN
Radiologist 2: SHREE SUBEDI
Radiologist 3:

Transcribed by: Tech IntTalk
Date Dictated:
Proxy Signer:
Authenticating Radiologist: RUSSELL CHAPIN
Date Authenticated: 06/22/2012 08:07

EXAMINATION: CERVICAL SPINE CT 06/22/12 00:09:00

ACCESSION NUMBER: 6717627

INDICATION: acute pain due to fall, loc+, c spine tenderness, acute pain due to fall, loc+, c spine tenderness acute pain due to fall, loc+, c spine tenderness

COMPARISON: None

TECHNIQUE: Multiple contiguous spiral CT images were obtained through the cervical spine without IV contrast.

FINDINGS: Suboptimal elevation due to significant artifact. There is normal alignment of the cervical spine with no evidence of acute fracture or dislocation. Vertebral body heights are preserved. Posterior elements are unremarkable. There is multilevel degenerative disk disease most prominent at C5-6 and C6-7 levels with disk osteophyte complex formation and mild effacement of the spinal canal at the same level. There is no prevertebral soft tissue swelling, no evidence of pneumothorax. Visualized potion of the skull base shows no evidence of fractures.

IMPRESSION:

No acute fracture or dislocation of the cervical spine noted given the degree of artifact.

Multilevel degenerative disk disease most prominent at C5-6 and C6-7 with disk osteophyte complex formation causing mild effacement of the spinal canal at the same level.

VOICE DICTATED BY: Dr. Shree Subedi

D

PAIN

Technologist: JOHN DAVIS
Radiologist 1: RUSSELL CHAPIN
Radiologist 2: SHREE SUBEDI
Radiologist 3:

Transcribed by: Tech IntTalk
Date Dictated:
Proxy Signer:
Authenticating Radiologist: RUSSELL CHAPIN
Date Authenticated: 06/22/2012 08:39

EXAMINATION: SHOULDER 06/21/12 23:39:00

ACCESSION NUMBER: 6717632

INDICATION: PAIN

COMPARISON: Chest x-ray 9/7/03

FINDINGS: AP internal and external rotation and axillary Y views of right shoulder demonstrate no evidence of acute fracture or dislocation. Humeral head is well seated within the glenoid. The there are multiple bullet fragments overlie right shoulder, unchanged compared to chest radiograph from 2003. There are degenerative changes of the glenohumeral and acromioclavicular joints. Irregularity of the greater tuberosity noted due to rotator cuff disease.

IMPRESSION:

Chronic degenerative changes of the acromioclavicular and glenohumeral joint without acute fractures.

Stable appearance of the multiple metallic fragments consistent with prior shotgun injury.

Key findings discussed with emergency room physician 6/22/2012 12:24 AM

VOICE DICTATED BY: Dr. Shree Subedi

E

Medical University of South Carolina

Charleston, SC

843-792-2123

Radiology Report

Patient: POWELL, JACK A
Procedure: 6717626
Accession# 6717626

MRN: 001413630
Date Exam Completed: 2012/06/22
Last Update: 2012/06/22

EXAMINATION: BRAIN CT 06/22/12 00:09:00

ACCESSION NUMBER: 6717626

INDICATION: acute pain due to fall, loss of consciousness, cervical spine tenderness

COMPARISON: None

TECHNIQUE: Multiple contiguous CT images of the brain without intravenous contrast were obtained.

FINDINGS: There is no contusion, subarachnoid hemorrhage, extra-axial collections, or other intracranial bleed. There are no signs of acute infarction. The ventricles and other CSF spaces are unremarkable. Irregularity of the tip of the nasal bone noted. The paranasal sinuses and mastoid air cells are clear.

IMPRESSION:

No acute intracranial injury.

Irregularity of the tip of the nasal bone likely due to prior fracture. Clinical correlation recommended.

VOICE DICTATED BY: Dr. Shree Subedi

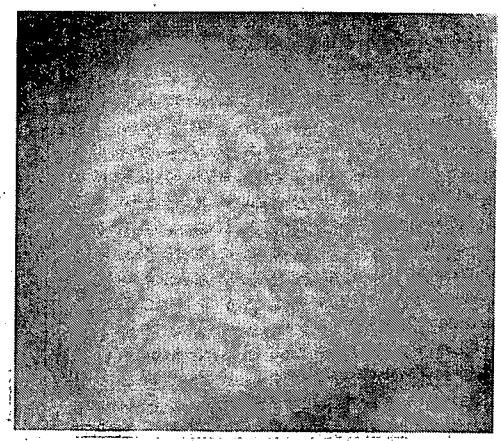
History: acute pain due to fall, loc+, c spine tenderness

Technologist: BETH POTTS
Radiologist 1: M. MATHEUS MD
Radiologist 2: SHREE SUBEDI RAD RESIDENT
Radiologist 3: BORKO KERESHI RAD RESIDENT
Transcribed By:

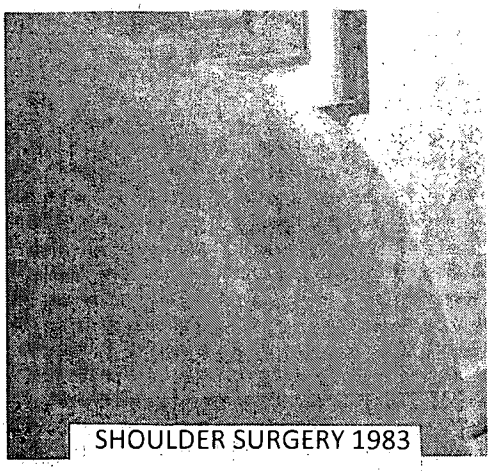
Date Dictated:
Proxy Signer:
Authenticating Radiologist: M. MATHEUS GISELE RADIOLOGIST
Date Authenticated: 8/22/12 10:13 AM

Printed by: COLLINS, VALERIE

F

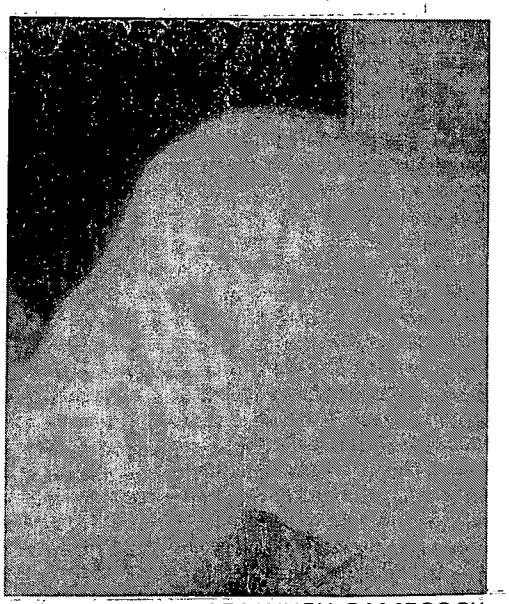


FOREHEAD INJURED WHEN
KNOCKED UNCONSCIOUS



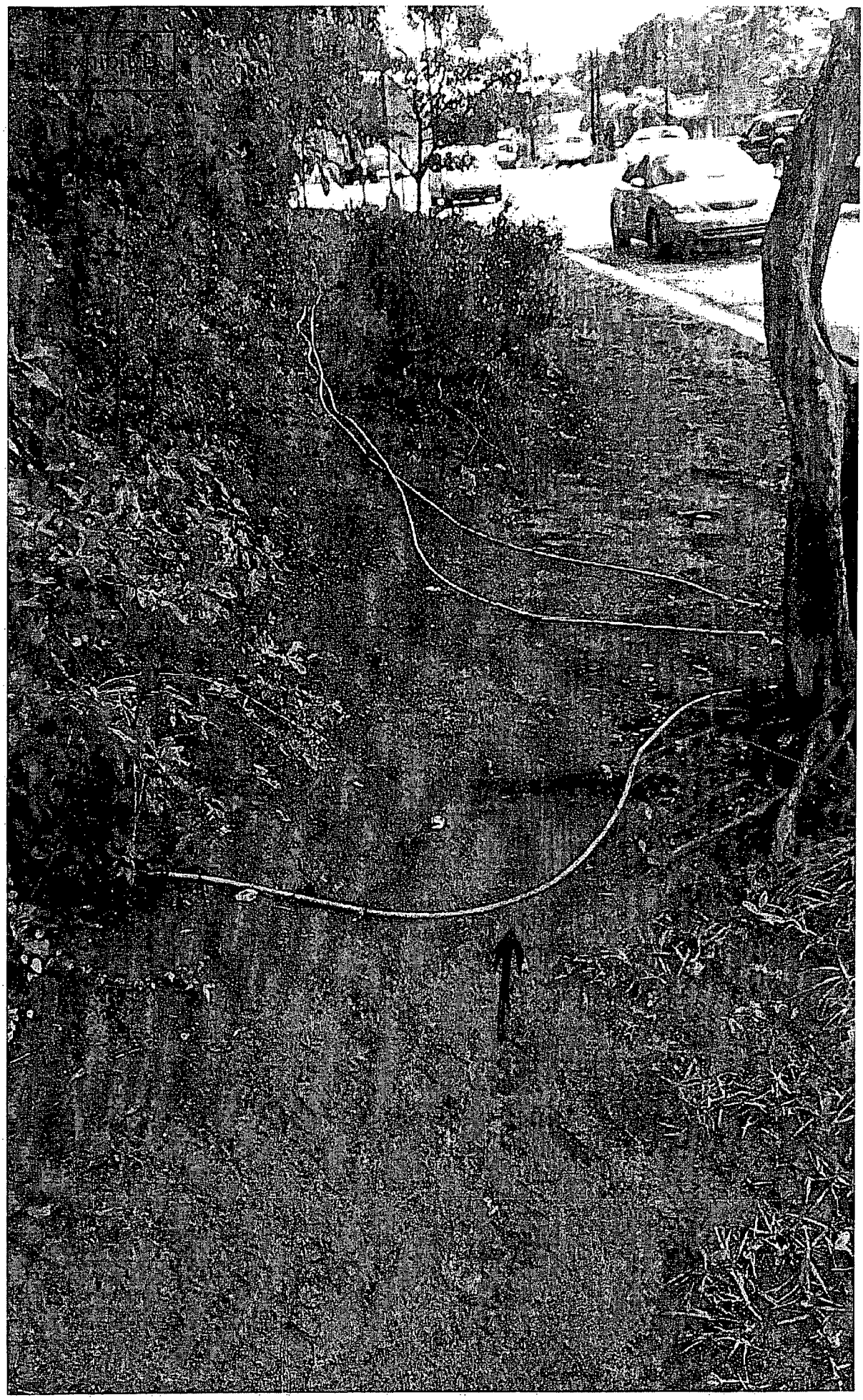
SHOULDER SURGERY 1983
ROTOR CUFF DISEASE

NECK SURGERY 1978, "224" STITCHES
DEGENERATIVE DISC DISEASE
AND DISC OSTEOPHYTE



1ST OPERATION; 1974 WHEN GAMECOCK
FOOTBALL PLAYER; CHRONIC LOOSE BODIES

2ND OPERATION; 1977 AT DUKE. ONE OF FIRST COMPLETE RECONSTRUCTION. "U" SHAPED METALLIC DEVICE WITH STAPLED TENDONS TO BONE, SEVERE "3"COMPARTMENT ARTHRITAS.



G

Gmail

Jack Powell <carolineschair@gmail.com>

Exposed wire

5 messages

Jason Tant <Jason.Tant@knology.com>
To: "carolineschair@gmail.com" <carolineschair@gmail.com>

Thu, Jun 28, 2012 at 10:10 AM

Good morning Mr. Powell I am extremely sorry to hear about what happened and would like to speak with you about the incident. I tried calling the numbers that were given to me but both gave me errors (843-743-6485 and 603-857-1493), can you send me your contact information please? I also want you to know that we immediately went out and removed the lines except for one, it was a Comcast line feeding the lawyers office, I notified them to contact Comcast to have it removed or buried asap.

Thank you,

Jason Tant

I

2
EXH.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
JACK POWELL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 13-CP-10-6019
	)	
KNOLOGY OF CHARLESTON INC.,	)	
	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on April 2, 2015, before The Honorable R. Markley Dennis in Courtroom 4D of the Charleston County Courthouse, 100 Meeting Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Jack Powell
1402 Camp Road, Unit 8A
Charleston, South Carolina 29412
Appearing Pro Se

Ben Davis, Esq.
McANGUS GOUDELOCK & COURIE
735 Johnnie Dodds Blvd, Suite 200
Mount Pleasant, South Carolina 29465
Appearing for Knology of Charleston, Inc.

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616
dgarrison@sccourts.org

THE COURT: The next one is number eighteen, that would be Powell v. Knology.

MR. DAVIS: Your Honor.

THE COURT: Good morning. Good to see y'all again. All right. You're Jack Powell?

MR. POWELL: (Affirmative nod).

THE COURT: And you're representing yourself?

MR. POWELL: Pro se, (affirmative nod).

THE COURT: Thank you, sir. And you are?

MR. DAVIS: Ben Davis, Your Honor, here representing Knology.

THE COURT: Okay. And we have Motions for summary judgment -- cross Motions for summary judgment. Correct?

MR. DAVIS: Yes, Your Honor.

THE COURT: Okay, let's deal with -- the first one filed, I'll be happy to hear that one first. I'll be happy to hear from you, Mr. Powell.

MR. POWELL: Which one are we talking about?

THE COURT: Your Motion for summary judgment, as to why you should have summary judgment granted.

MR. POWELL: In brief consideration of, uh, with, uh, because at that time, Your Honor, ---

THE COURT: It's the second Motion, is what's listed.

MR. POWELL: I was denied summary judgment because at the last moment the defendant said that I didn't prove that they owned the line one hundred percent.

The reason is because in discovery, -- I set this Motion up because discovery was supposed to be returned to me ten days ago, that would have verified the ownership of Knology -- that Knology owned the cable lines. Of course they hadn't returned the discovery that I could present to you now for my reconsideration. They were compelled back in July to give this information.

THE COURT: All right, what is your position, Mr. Davis?

MR. DAVIS: Your Honor, I've had -- in terms of the discovery, uh, -- well, in

response to Mr. Powell's second Motion for summary judgment or Motion for reconsideration, uh, and the discovery that he referenced, held back in July, uh, both of those Motions were heard and denied.

He has, on several occasions since that time, attempted to re-serve the same discovery that we had responded to back in July. I believe that there were two Motions, one on the sufficiency of our Answers -- our responses to Requests to Admit. Those were deemed sufficient.

Second, on his Motion for production, Motion to compel requests to produce, there were some issues over objections on those. Those were -- that Motion was resolved as well.

So, uh, I believe he is referring to discovery that he has again re-served most recently. I've responded to him indicating that if he'd like to serve supplemental discovery that we'd be happy to respond to it, but otherwise I referred him back to our original Answers from July.

THE COURT: Okay.

MR. POWELL: Your Honor, ---

THE COURT: Hold on, Mr. Powell -- I'm writing. Okay. Yes, sir?

MR. POWELL: I think Mr. Davis is trying to confuse the Court.

THE COURT: The Court is not -- the Court has the file. I'm not confused at all, Mr. Powell. I appreciate your position. Your Motion is a second Motion and it's captioned ---

MR. POWELL: He's ---

THE COURT: Mr. Powell, I'm talking now. It's my turn. Okay? Mr. Powell, I will let you respond in just a minute.

MR. POWELL: Okay.

THE COURT: But don't interrupt the Court while I'm about to discuss, because it's part of my ruling -- please.

MR. POWELL: Yes, sir.

THE COURT: I'm looking at your pleading which was filed March 2nd. It says Plaintiff's Informal Request to the Court for Second Motion for Summary Judgment. That's what you are here for today.

I've looked at Judge Jefferson's Order and I've looked at your Motion for summary judgment that she previously ruled on.

There is no basis for this either, so I deny your Motion. Thank you.

Now, what other issue do you have?

Again, when you're talking -- you're talking about a discovery issue which is not before me. That's the point.

If you have some problem that they haven't produced something that you believe that they have or should have, then you have to file a Motion to Produce. I'm really giving legal advice now and I'm prohibited from doing that. But there are just certain -- there is a procedure that you have to go through. You don't get to argue and reargue your Motion to produce in a Motion for summary judgment. It's that simple.

MR. POWELL: May I?

THE COURT: Yes, sir, now it's your turn.

MR. POWELL: We were in court that day in July.

THE COURT: I don't need to talk about that. I don't need to talk about that, Mr. Powell.

MR. POWELL: Okay. Well, it says right here that you -- he says here in this letter that you said that I needed to supplement these questions. I sent them to him, and he still hasn't returned them. That was ---

THE COURT: Mr. Powell -- Mr. Powell, you haven't filed a Motion to compel responses to discovery.

MR. POWELL: I have.

THE COURT: All right, what -- when did you file that?

MR. POWELL: Before July 30th.

THE COURT: And that -- and that -- let me look through the file. Now, be careful what you're saying, that we didn't have a ruling on that Motion to Compel. Because that's what Mr. Davis just said ---

MR. POWELL: There was a ruling.

THE COURT: Then it's been ruled on.

MR. POWELL: But the production

wasn't. He handed me the production in the hallway, and it was never heard in the courtroom. All he handed me was a piece of paper, he didn't give me all ---

THE COURT: And have you filed any additional requests?

MR. POWELL: Yes, sir. I filed a supplemental request and answered these questions. Right here it is that he received this and was supposed to return the answers as of the 22nd of last month. Then he said that these had been resolved. Well, it hasn't been resolved. He's just handed me the production/answers out in the hallway, is all that he did. He didn't give me the actual information that I asked for in the request, still hasn't.

THE COURT: Then you need to be specific as to what it is that you think that he should give you. You haven't done that.

MR. POWELL: No, sir, I was very specific.

THE COURT: No, sir. I'm telling you that you're going to file a supplemental request that says "I want these" -- 'you've

given me A, B and C and I'm entitled to E, D, F. You identify D, E and F, not just 'give me all documents.'

MR. POWELL: Well, I've only got four or five in here, specific ones. It wasn't the whole request that I had in the beginning.

THE COURT: And which Motion -- do you have a copy of the Motion that you are referring to?

MR. POWELL: Yes, sir.

THE COURT: If you would, pass it up.

MR. POWELL: That I sent him.

THE COURT: No, sir, let me see the one that you have in your hand right now, that you're relying on.

MR. POWELL: (Tenders), ---

THE COURT: Thank you. (Upon review), and this is a -- what you've handed me says Supplemental Request for Admit. That's what you are talking about?

MR. POWELL: Right, and then there is a second one for ---

THE COURT: Just ---

MR. POWELL: Yes, sir.

THE COURT: Dated and mailed 2/20/15. That means in February of this year, correct?

MR. POWELL: Right.

THE COURT: Correct?

MR. POWELL: Right.

THE COURT: What I am trying to tell you is that this Motion -- that there is Motion -- you haven't filed any Motion. You've just requested from him. If you think that he hasn't answered, you have to file a Motion to Compel, response to what I'm holding in my hand. That's not before me. That's what I'm trying to tell you.

MR. POWELL: Okay.

THE COURT: Okay?

MR. POWELL: That's all I -- the only point that I was trying to make was that I ---

THE COURT: Mr. Powell, he has answered you. You don't think that he has answered you sufficiently. That's where you file a Motion to compel and you set forth specifically what you believe you're entitled

to. But that's not before me today.

MR. POWELL: I ---

THE COURT: Mr. Powell, that's not before me today.

MR. POWELL: Okay.

THE COURT: So there's no need for us to talk about that.

MR. POWELL: Okay.

THE COURT: Because all I have is your Motion for Summary Judgment and Mr. Davis' Motion for Summary Judgment. Those are the only two Motions that we have.

If you want him to provide something else, you have to file the proper Motion. Okay?

MR. POWELL: Okay.

THE COURT: Thank you.

Mr. Davis, now I will hear you on your Motion for Summary Judgment.

MR. DAVIS: Thank you, Your Honor, may it please the Court.

THE COURT: Sure.

MR. DAVIS: We sent you a memorandum of ---

THE COURT: You did and your

memorandum is incorporated fully for the purposes of review should that become necessary; just as Mr. Powell's memorandum that he submitted with his Motion is likewise incorporated, as well, for purposes of review.

MR. DAVIS: Thank you.

THE COURT: Yes, sir.

MR. DAVIS: He has, in his Complaint, raised as best I can tell two causes of action against Knology.

The first cause of action is negligent supervision, against Knology. It's our position that -- well, first of all, Knology is the only party to the lawsuit. There really is no issue of fact in terms of -- there's really not a fit for a negligent supervision cause of action in the case.

I'm sure the court is familiar with the elements of negligent supervision.

THE COURT: I am.

MR. DAVIS: Knology, again, is the only defendant. Plaintiff has -- neither in his Complaint nor through discovery -- not produced any fact that would suggest that the

incident occurred on Knology's land.

THE COURT: Well, he has alleged a negligence action on the part of Knology, so it really is ---

MR. DAVIS: Yes, Your Honor.

THE COURT: Okay. I mean, I -- that's not something that you have to defend, really, because you are going to be defending your actions anyway.

MR. DAVIS: Okay. Thank you, Your Honor. And the second -- as Your Honor alluded to, the second cause of action that he alleges is gross negligence.

On that issue, as I am sure the Court knows, absent a legally-recognized duty the defendant is a negligence action is entitled to judgment as a matter of law, and it's our position that Knology did not owe him any duty in this case.

In his Complaint he points to what he describes as a right-of-way that is in front of or adjacent to 930 Folly Road. Knology does not own either what he's calling the right-of-way or the property at 930 Folly Road.

Knology produced our records in response to him to indicate that the only installation work that Knology has ever done or the only installation of cable Knology has ever performed in the area was completed August 22nd, 2006.

We've also produced discovery to Mr. Powell showing that that installation was for services provided to 930 Folly Road, Units A and B. That the services on Unit A remained active until 2009 and the services on Unit B remained active until 2008.

This -- and this is a fall that occurred June 21st, 2012.

Knology, again, did not own the land. Back in 2006, the right-of-way was set to change ownership ---

THE COURT: I understand all that. Did you put the cable in the right-of-way?

MR. DAVIS: There is no evidence that Knology -- that these cables were placed there by Knology. The only chance that they potentially could belong to Knology is this 2006 installation that our records show was performed properly.

THE COURT: I understand that but -- it's an issue of fact as to whether it was performed properly, isn't it?

MR. DAVIS: But there's no evidence that Mr. Powell -- Mr. Powell hasn't shown any evidence to the contrary. There is essentially no evidence that the cables in the right-of-way belong to Knology, or that Knology had any notice of these cables before this fall in 2012, or notice of any conditions that ---

THE COURT: Well, I appreciate that. Notice would be a situation if you didn't put it there, if maybe you were the right-of-way owner but, uh, -- if you installed the cables, you're responsible. Are you not?

It's kinda like the lighting case that we tried the end of last year, a trip-and-fall. It'd been there for a long, long time but nobody fell. But then when somebody fell -- the lighting was poor and that was a negligence issue; at least the jury said so, eighty percent responsible on the part of the defendant for not lighting it properly.

So I appreciate that. To me, that's an issue of fact as to -- if there's a -- no question you did work in this area. I mean, you're not denying that?

MR. DAVIS: No, Your Honor.

THE COURT: Okay. All right, Mr. Powell, what is your position? What proof do you have that Knology is the person (sic) that put in this work, that installed the cables that caused the fall?

MR. POWELL: Well, ---

THE COURT: Other than *res ipsa*, which we don't recognize.

MR. POWELL: Before I get to that, I've got his letter from the South Carolina D.O.T. where Knology did get encroachment permits for ---

THE COURT: Listen. I appreciate all of that.

MR. POWELL: Okay.

THE COURT: I'm asking you, what question -- I assume that is dated back in 2006?

MR. POWELL: No, I got this last week.

THE COURT: No, what is the date of the ---

MR. POWELL: It was the same month that they -- back in 2006. August.

THE COURT: Okay. Well, that's fine. That's -- the fact that they got an encroachment permit doesn't have a thing to do with this case. Doesn't have anything to do with it.

MR. POWELL: Well, they broke the law is what they're saying.

THE COURT: Well, I appreciate that.

MR. POWELL: Well, okay. Your Honor, as far as me proving one hundred percent -- there again, I was denied the Motion for summary judgment for lack of proof the last time. But it says right here that the ---

THE COURT: Well, you were denied summary judgment because there's an issue of fact, not because you hadn't proven anything. Summary judgment doesn't deal with that.

MR. POWELL: Well, it's because they brought the last ---

THE COURT: Please, let's don't argue that. I asked you a specific question, Mr. Powell. Help me here.

MR. POWELL: Okay.

THE COURT: What evidence do you have that Knology installed the cables that you tripped on?

MR. POWELL: All right. Your Honor, it says right here on their work order that they had -- they had an ASAP work order for that day, they had to get it done that day, ---

THE COURT: That day being in 2006?

MR. POWELL: Yes, 8-14-2006, due to be -- "install today, ASAP" but there was a concern about the sprinkler system.

THE COURT: Which was where? Not in ---

MR. POWELL: The whole front yard. It's like a hundred feet where they run it, 930 Folly Road.

THE COURT: Well, I understand that but that's not in the easement, is it?

MR. POWELL: No, but that's the

reason they didn't bury the lines.

THE COURT: All right.

MR. POWELL: It says right here that -- in this work order that Mr. Davis gave you, it doesn't say anything about what they did to --- ?

THE COURT: What evidence do you have that this is their cable?

MR. POWELL: The only evidence that I have that this is their cable is back in -- that, uh, -- that they -- right here it says, 'All documents concerning Lee Endicott, Charleston Center (phonetic), who agreed to pay Mr. Powell his doctor's bills and he was told that he'd have to wait several weeks to receive the check.'

Then there was the supplement request, 'all documents concerning about when Knology came to the property to remove the lines.'

THE COURT: Removed the lines?

MR. POWELL: Well, see when they -- Your Honor, my wife called ---

THE COURT: When did they remove the lines?

MR. POWELL: My wife called the next day after I was injured ---

THE COURT: Where is that? Is there an affidavit of this?

MR. POWELL: Well, it's in my Complaint also.

THE COURT: No, it's not -- is there an affidavit for what you're about to tell me?

MR. POWELL: I'm not sure that I know exactly what you mean by an affidavit.

THE COURT: Well, until ---

MR. POWELL: It's in my Complaint.

THE COURT: Well, I'm sure you don't. That doesn't survive the day for summary judgment.

MR. POWELL: Okay. It goes -- the fact why I can't say for one hundred percent is because when we went to Knology, the manager -- my wife called Knology the next day and the cable lines were gone.

The next day we went to Knology and their manager offered me twenty-nine hundred dollars ($2,900), told me that it would be several weeks before I'd receive that money.

THE COURT: Okay.

MR. POWELL: But, see, now Mr. Davis was telling me yesterday that Lee Endicott doesn't work there anymore and he's never returned the documents in production of what this man did and why he offered me the money and who he said -- I still haven't received the production.

THE COURT: Okay. Anything else?

MR. POWELL: So there, again, I can't -- without that, I can't say one hundred percent.

THE COURT: Okay.

MR. POWELL: Even though it's pretty obvious. I think maybe the court gets to decide.

THE COURT: Okay. Anything else, Mr. Powell?

MR. POWELL: Sir?

THE COURT: Anything else?

MR. POWELL: I'm sure that there probably is but, see, I had all this laid out to present to you but now I'm thoroughly confused.

THE COURT: Well, I -- sorry about

that.

MR. POWELL: I ---

THE COURT: I've incorporated your memorandum. That's included. I did not see -- and you've indicated that you really don't know what the question of an affidavit is, but there's no affidavit, no statement, no deposition testimony setting forth everything that you've just stated about what transpired with your discussion or your wife's discussion. Correct?

MR. POWELL: (No verbal response).

THE COURT: There is no affidavit, she has not been deposed and so there's no statement other than your statement; correct?

MR. POWELL: I think I've got it in one of my production questions.

THE COURT: Oh, I understand that. I'm talking about a sworn statement.

MR. POWELL: A sworn statement?

THE COURT: Yes, sir.

MR. POWELL: That, uh, me and my wife went to talk to the manager?

THE COURT: Yes.

MR. POWELL: No, there's not a

sworn statement.

THE COURT: Thank you, sir. That was one in the golf ball case, a lawyer representing the plaintiff swore that he talked to an expert in California. He put that in an affidavit because he said that the expert told him that there was a violation of the Code. I granted summary judgment because I didn't think that a lawyer's affidavit was sufficient. The Supreme Court reversed me on that because it said that it was an affidavit and, therefore, it created an issue of fact. But I don't have any affidavits here.

MR. POWELL: I ---

THE COURT: Mr. Powell, I'm about to rule -- your statements are fully contained in the record.

MR. POWELL: Okay.

THE COURT: Mr. Powell, I gave you a full opportunity to do that. Mr. Davis, your Motion is granted.

MR. DAVIS: Thank you, Your Honor.

THE COURT: So the case is over. You can appeal this once you get the Order,

Mr. Powell, and take it to the Supreme Court. Maybe they will help you out up there.

If you (Mr. Davis) will prepare the Order.

MR. DAVIS: Yes, sir. Thank you, Your Honor.

(HEARING CONCLUDED)

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 13th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on April 2nd, 2015, before The Honorable R. Markley Dennis, Jr.;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Deborah Garrison

Deborah Garrison

Greenville, South Carolina

FORM 7
PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

Civil Case; 2013-CP-10-6019
Appeal; 2016-001035

Jack Powell, Appellant.

V.

Knology of Charleston, Inc. Respondent,

PROOF OF SERVICE

I certify the Appellants Motion for Relief of Judgment was mailed by the USPS on 12-13-16 to Knology's attorney of record Benjamin B. Davis of Mcangus, Goudelock & Courie located at 735 Johnnie Dodds Blvd. Mt. Pleasant S.C. 29464.

Dec. 13th, 2016

Pro se, Appellant Jack Powell
1402 Camp Rd. Unit 8-A
Charleston, South Carolina 29412
(843) 952-4762

CC; V. CLAIRE ALLEN, DEPUTY CLERK
KNOLOGY OF CHARLESTON INC.
BENJAMIN B. DAVIS, ESQUIRE OF
MCANGUS, GOUDELOCK & COURIE

December 13, 2016

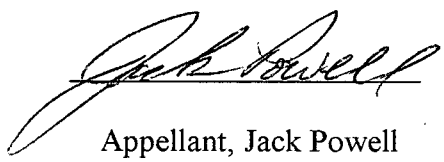
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

RE; Jack Powell v Knology of Charleston Inc.
Appellate case no; 2016-001035

Dear Ms. Kitchings,

This is Pro se, Appellant Jack Powell and in the above case 2016-001035 I have enclosed a $25 money order for my Motion for Relief of Judgment, pursuant 60 (b)(1)(2)(3)(4)(6).

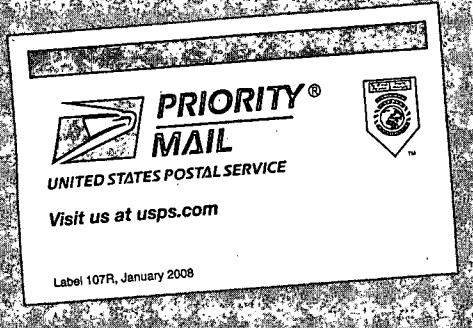
December 13th, 2016

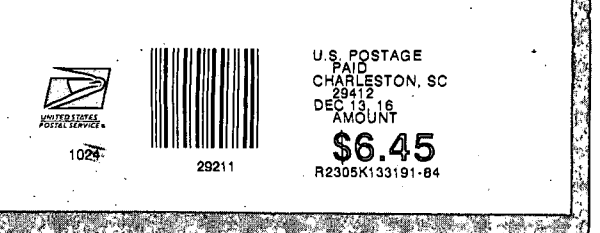


Appellant, Jack Powell
1402 Camp Road, Unit 8-A
Charleston, S.C. 29412
(843)952-4762

cc; Deputy Clerk/V. Claire Allen
Attorney/Benjamin Davis

1402 Camp Rd Unit 48-19
Charleston, SC 29412





RECEIVED
DEC 15 2016
SC Court of Appeals

South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211
c/o Elizabeth Carter