

FORM 7

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

Case No. 2016-001035

RECEIVED

APR 11 2017

SC Court of Appeals

Jack Powell,

Appellant,

v.

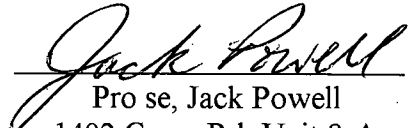
Knology of Charleston Inc.,

Respondent,

Notice of Motion for Relief of Judgment filed with Civil Court

Appellant Pro se Jack Powell has mailed his notice of his motion concerning Appeal 2016-001035 to Knology of Charleston Inc. represented by Mcangus, Goudelock & Courie located at 735 Johnnie Dodds Blvd, Ste 200, Mount Pleasant, S.C. 29464, by depositing a copy in the United States Mail, postage prepaid on April 4th, 2017

April 4th, 2017


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

CC: V. CLAIRE ALLEN
MCANGUS, GOUDELOCK & COURIE

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO. 2013-CP-10-6019

Jack Powell, Plaintiff,

vs

Knology of Charleston Inc. Defendant.

PLAINTIFF'S
MOTION FOR
RELIEF OF JUDGMENT

TO: DEFENDANT, KNOLOGY OF CHARLESTON INC.

Pro se Jack Powell filed this Complaint on Oct 28,th 2013 for gross negligence, breach of duty and negligent supervision of employees and/or subcontractors. On 4-2-15 the Defendant was granted summary judgment. On 4-13-15 the Pro se filed a motion for reconsideration, but Judge Dennis ruled it premature on 5-6-15. On 6-8-15 the Pros se's motion to recuse was denied and the order granting defendant motion for summary judgment wasn't signed until 4-6-16. Furthermore the Pro se felt there wasn't any need to refile his motion for reconsideration because of the denial of the Recusal and the Order was signed on 4-5-16. Then the Pro se filed an Appeal to the South Carolina Court of Appeals on 5-16-16.

1. But on 7-10-16, the Pro se Plaintiff was removing old emails and he discovered that the Knology's Operations Manager Jason Tant or Jason.Tant@Knology.com had sent the Pro se an email on 6-28-12 that proved the Defendant was on the right of way after 6-21-12 to remove their 2 unburied cable lines.

2. The Pro se discovered a new photo and an alternative defense, after the motion for summary judgment on 4-2-15 because the evidence was tactically and evasively concealed in the Defendants memorandum in support for summary judgment that was filed with the Charleston Clerks Office the same day as the 2 MSJ's. The Lower Court had a copy and may have granted summary judgment because of the unattested evidence that was submitted as an alternative

A

defense after successfully evading the delivery of a copy to Pro se before the MSJ hearing.

3. Pro se submits the Defendant stated in their memorandum in support for S.J. that "the Pro se hadn't identified nor produced any admissible evidence" "either received or responded to complaints" or otherwise visit the right of way or adjacent property at 930 Folly Road since 12-1-2009." Pro se submits that the Defendant knew these statements were an untruth and they were exercising fraud on the Court which was supported by their misrepresentation and their misconduct when they knew they were concealing the evidence that proved 100% Knology was negligent when they just abandoned their 2 unburied cable lines after their accounts A & B at 930 Folly Road were terminated.

4. The Pro se didn't discover the final evidence until a year later in the Order Granting Defendants Motion for Summary Judgment, because the Pro se never received the copy in the mail the Defendant stated was "in the mail." Also Pro se didn't discover this new evidence until he had discovered the email from Knology Operations Manager Jason Tant and then Pro se got a copy and read the Order because the Pro se was involved with other cases and he wasn't happy with the results of the summary judgment hearing.

Furthermore Pro se also submits this Motion for Relief of Judgment pursuant Rule 60(b) (1)(2)(3) & (d)(3) because there were mistakes by the Lower Court that denied the Pro se his his right to receive discovery of the new evidence in the Lower Courts ordered supplemental request of Admissions and Production that consisted of vital company documents and in the Defendants memorandum. Therefore, because of these mistakes the Pro se was denied his right to acquire, read and prepare an argument because of the mistakes by the Lower Court to allow Knology to evade and not produce the new evidence. Therefore the Pro se request the Honorable Court of Common Pleas in the Ninth Judicial Circuit to grant Relief of Judgment.

STATEMENT OF CASE

Beginning on June 21st, 2012

Exhibit A

1. On June 21st, 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 & his memorandum in support for MSJ. Exh. B.

2. Mr. Powell had to be given pain medication twice for his ongoing pain and he also had to endure hours of painful X-rays. **Exh. B-F** & Plaintiffs Return of Production Request to Defendant **Exh. G-J** on p. 2-5. Mr. Powells 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. **KNOLOGY'S FIRST DAY AT 930 FOLLY ROAD**
Plaintiff's Memorandum for MSJ p.3

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.

4. Pro se submits; Phone log states at 8:35 am, on the 14th Knology has already determined they need a drop bury and the lines are to be installed today, but they are concerned and have an expedited installation for today, ASAP! The Pro se agrees that Knology of Charleston were correct and should be concerned about a sprinkler system that covered an area about 100 feet from the front door to the pedestrian dirt pathway right of way and furthermore Pro se Plaintiff submits Defendant never introduced any documentation of how the underground sprinkler lines were identified and how or who actually buried their lines after they were asked multiple times to do so for over one year during discovery requests, compelled discovery and Judge Dennis ordered supplemental discovery requests of admissions and production of vital company documents. See Pro se **Exh K.** p.4 new evidence #4 & p.15, Pro se's motion for reconsideration p. 8-9, Exh O, V, W, X, Y. This was an unresolved genuine dispute before, during and after this MSJ hearing & Knology was intentionally violating S. C. Code of Laws. 56(d)(1)(2)(3) (e)(1)
5. The "2" lines were connected to the side of their account at 930 Folly Road and then just dropped, not buried and running through the front yard and running unburied through the pedestrian right of way and then connected to the telephone beside busy Folly Road. **DROP FROM POLE TO METER** because there wasn't enough time to discover

where all the water lines were to the sprinklers and then dig about 100 feet through the front yard and about 30 feet through the right of way.

6. The SCDOT stated Knology didn't acquire the Encroachment Permit that requires all legal safety measures to be met and because of the pressure to finish the "expedited request" to finish the job "ASAP" "today, the Defendant made a negligent decision and just dropped the cable lines and allowed them to run through the right of way and after time they were eventually abandoned after their customers at units A&B services were terminated on 6-8-2008 & 12-1-2009. Pro se's motion for reconsideration Exh. O & Q no. 12., **Exh K.** p.18 & Pro se's memorandum in support for summary judgment p.3 and Knology cable company did owe a duty to their contracted account the Folly Oak Center employees, their customers walking to & from the property and the local citizens walking through the right of way in front of their business, located at the busy 930 Folly Road.

7. Also the Defendant never submitted any proof they got a permit to legally bury the lines in the right of way. **Exh K.** p.4 bottom & p.5 where the application shall be filed at least 72 hours before the scheduled date for digging in the right of way. Therefore the Lower Court erred when overlooking these violations. 56 (e) South Carolina Court of Laws Section 58-12-310 (e)(2), 58-12-50, 58-12-70, 27-3-60, 56-5-480, 30-15 and S.C. Encroachment permit.

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.

8. **PLAINTIFFS 2nd MSJ Exhibit K**

Within K is p.9., 14., 15., 16., 17

1. ADMIT; your cables 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 at 930 Folly Road.

The Defendant just admitted their lines were connected to the building while being asked in the context of them running across the right of way. Their 2 lines were trespassing across the adjacent Charleston County property. Therefore their lines were just dropped, not buried and connected to a telephone pole by busy Folly Road.

DROP FROM POLE TO METER because there wasn't enough time to discover where the sprinkler systems were. **ASAP.** This was why they made a negligent decision 56(f)(1)

& Haines v. Kerner 404 USS 519; (1972) & Black v Lexington School Dist. (1997)

- 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 in time after the date of the alleged injury.

9. Knology owed a duty to Charlestons pedestrians & Pro se, and they were negligent when they violated the legal process of acquiring the Encroachment permit & Defendant never submitted any documentation of any kind proving they acquired the legal permits to dig on private property or on county property and their right of way. Furthermore they failed in their duty to protect Mr. Powell from harm by avoiding the legal inspection to see if their lines were buried properly, pursuant the codes of law and duty. **Exh. R p.16.**, 6-16. & **p.15.**, 12-25. also **Exh. K.** p.2., bottom 10 thru p.3 where Pro se submits their stealth removal of their lines and this wouldn't have been an issue if Pro se hadn't been denied his right to see their the new photo the Defendant had submitted in the next to the last page of their memorandum in support of summary judgment & **Exh. L & M**, Jason Tant email JasonTant@knology.com who was Knology's Charleston Operations Manager. Also see where an email is a written notice under Rule 203 (b)(1) SCACR and **Wells Fargo Bank, N.A. v. Fallon Props S.C. LLC.** Order no. 2015-08-26-01 with **Exh. M** that was submitted as proof of his employment at Knology of Charleston, because the Defendant refused to produce Knology's company documents and then insinuated Jason Tant wasn't a Knology employee, which is still an ongoing genuine dispute. Also the newly discovered email proves 100 % that Knology was the owner of the 2 unburied cable lines that caused Mr. Powell harm on the sidewalk right of way.

10. Knology was the original owner of the 2 cable lines that were connected to units A & B and were in fact the owners of their 2 unburied cable lines that were still 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 Inc. did cause the accident because of their negligent decisions. Furthermore, Lower Court erred when it was unconcerned about the Defendant evading the burial of the lines, caused by their ASAP decisions that led them to intentionally violate state, county and the Charleston ordinances by just negligently dropping their 2 lines in the right of way. Also the Lower Court failed to enforce proper Discovery procedures so the Pro se could acquire relevant production of documents that included the Jason Tant email. **Exh K.** p.4-5., p.14. 18-25 & p.15 4, 7, 8, 11, 15 & Rule 56 (d)(1)(2)(3) (e)(1).

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)

11. SCDOT didn't know they had to come to the site to ensure safety by inspecting the proper burial of their lines. The work was never inspected & this was negligent and a dispute concerning laws & ordinances broken by Knology who was supposed to file their application at least 72 hrs before the digging began. Pro se's 2nd motion for summary

judgment **Exh K**, p.5, 1st para. The Lower Court erred when it failed to ask one question concerning their violated permit and broken laws that made them liable for any injuries caused by their 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, Pro se's motion for reconsider **Exh. O** & memorandum in support of SJ p.5-6. If the Lower Court had enforced a proper response to their ordered supplemental request the Pro se would have had, if any documentation about the SCDOT contact & burial and the JasonTant@knology.com email that proved Knology was liable for the incident. See **Exh K**. p.4. 2nd para. & 5 and p.14., 4.

12. These Jason Tant email issues should have already been revealed, but Pro se was denied his due process to receive company emails from production #4 that included the Operations Manager Jason Tant and then be heard by the Court explaining the relevance of this email. Also Marketing Director Kayla Droney, **Exh N** & email **Exh O** which was mailed by Pro se on 9-4-12 to Jason Tant, over 2 months after the Pro se had received the email from Jason Tant. This proves the Pro se was unaware he had already received his email and Pro se submits these emails are newly found evidence pursuant 60 (b)(2).

Earle v Mcveigh, (1875), Baughman v American Tel. and Tel. (1993), Haines v. Kernor (1972)

13. The Pro se had to file his Complaint under Informa pauperis and he had to go the public library because he did not own a computer. Pro se was only allowed 2 hours a day

to use their computers **Exh P & W.** and the Pro se did not have complete control and access to his emails because of their time restraints and this is the main reason Pro se did not discover he had the email and he also didn't have assistants to help organize his work.

14. Exh Y 1-9-15 Pro se emailed Defendant, see Pro se's **Exh. K**, p.8, para 2 about document request 14, 15 and evasive response¹⁶; Pro se reminded Defendant in para. 2, no.7. that he would make available inspecting & copying these records to the Pro se at the following location, after sufficiently reasonable advance notice is provided and the Pro se stated it's been over 5 months and I would like to come by next week to see the records.

Pro se's motion for reconsideration p.2-3 & **Exh. B-C**. Pro se was never allowed to see these documents at their office or even in the ordered supplemental request that was due just days before the MSJ hearings on 4-2-15. **Exh K**. p.2., 1., p.4., para 2. & Pro se never received these documents of relevant evidence and because of this evasive response the granting of summary judgment was premature because the Pro se was supposed to have already received the production of Knology's documents pursuant 56 (d)(2) (f). **Exh T,U**

15. Furthermore, Pro se's 2nd MSJ, **Exh K**. was filed because Pro se was expecting a properly served supplementary request response before the MSJ hearing that would have produced the Jason Tant email & the Lee Endicott records discussing his monetary offer with Knology's main office & with Mr. Powell, which would of had more evidence about Pro se's home visit from special investigator James Budkis from Hartford insurance. See Pro se's Complaint p.1 at bottom and the technicians name that removed Knology's lines

after Lee Endicott was notified. But, the Lower Court allowed the Defendant to evade producing it's ordered supplementary request and this mistake by the Court rendered the Pro se's MSJ & Defendants MSJ premature. 56 (c)(1)(b) (2)(3) (d)(1)(2)(3) (e)(1) 56 subd. (c)(1)(b) & 6(b) **Frederick Hart & Co. Inc. v. Recordgraph Corp. (3d Cir. 1948). Exh U**

16. **Exh Y.** 1-12-15 at 4:20 p.m. 3 days after Pro se had e-mailed Defendant, we discussed when Pro se could come by to see the records & Defendant told Pro se on Monday you would call in a couple of days, Defendant didn't and Pro se never received these documents & he was never allowed to come to their office. The Pro se was not able to argue against their MSJ properly because of their extrinsic fraud & their evasive tactic of not producing the relevant evidence from admit & the companies documents that was ordered to be supplemented by the Pro se during his original Motion to Compel Knology on 7-30-15. But, later the Pro se was denied his right to receive the Jason Tant email which was a mistake by Lower Court. See 60(b)(1)(3) & **Exh. K** p.8., #15.

17. Lower Court erred when it granted SJ and signed the Order after it heard this argued during the MSJ hearing **Exh. R. Tran. p.3., 7. thru p.10., 14.** The Court read this in the Motion to Recuse p.4, 15. that revealed the disputes about Knology's new photo they had submitted in their memorandum in support for summary judgment, next to last page and their Jason Tant email proving 100% Knology owned the 2 unburied cable lines. **Exh K., p.8,** Lower Court erred pursuant 56 (c)(1)(a) (c)((2)(d) (e)(1)(f)(g) & subd. (c)(2)

(e)(2)(3)(4) (f), 37 (a)(3) & 60 (b)(1).

18. On 3-13-15 Mr. Davis asked Pro se 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. Pro se agreed only because he thought Mr. Davis was speaking truthfully, so he could fulfill his obligation to respond to the Supplemental Admit & Prod. that were unanswered since 7-30-14. Pro se's motion for reconsideration p.2 & Exh. A. 60 (b)(3) misconduct, intentional deception, misrepresentation & extrinsic fraud by Attorney, because he knew the Jason Tant email proved Knology's liability and pro se wasn't allowed to acquire it and this was a mistake by Lower Court. **Exh T.**

19. A couple of days later during a telephone call Pro se agreed to postpone the jury selection for the need for more Discovery & the next day on the 16th Attorney Ben Davis improperly filed his motion for summary judgment only to evade their responses to the supplemental Admit & Prod. and the Jason Tant email. Defendant knew the filing of their MSJ was improper misconduct, misrepresentation, 60 (b)(1)(2)(3) & subd. (b) and also extrinsic fraud because their Attorney intentionally & fraudulently acted to deprive Pro se from obtaining their new photo and their alternative defense that was submitted in their memorandum for MSJ. This was an attempt to deprive Pro se his opportunity to be heard, by exercising his right to defend himself during Defendants MSJ hearing with discovery of the Jason Tant email. Motion for reconsideration Exh B. 56 (b) (d) (f) subd. (c)(1)(2) (d) (e)(2)(4), 15 (c)(1)(b), 56 (c)(3) (d)(1) (2)(e) (3) subd. (e)(4) & **Earle v. Mcveigh (1875), Haines v Kerner 404 USS 519; 1972, Baughman v. American telephone**

Comp. (1991), Hamilton v Miller (1991).

20. On 3-23-15 in Pro se motion for reconsideration Exh D, Mr. Davis states he received Pro se's Supplemental Request & states; they were just reasserted and Pro se submits that request no. 10 & 15 weren't heard or just reasserted and production could have not been reasserted because the compelled production on Jul 30th 2014 wasn't heard because Judge Dennis told the Pro se to supplement the request because the original production request was returned by Mr. Davis in the hallway just minutes before the compelled hearings and it wasn't complete. This request was not a reassertion or denied and the Attorney stated an untruth to the court. Motion for reconsideration Exh D. he stated on 13-17. "and they were resolved" but they weren't, because Lower Court agreed with Pro se to submit some revised request for production during that Compelled hearing. **Exh Q.** p.2., 10-22 & Lower Court made a mistake by not investigating these issues of disputes concerning Mr. Davis's statements, because he confused the Court and the Jason Tant email was successfully hidden again. **Exh T-U**

21. **Exh R.** p.3., 24. thru p.6.; 10. Lower Court was confused because Defendant was talking about discovery issues and it failed to realize that the Defendant had not responded to it's ordered supplemental request & then the Lower Court cut Pro se off and asked Mr. Davis about his position. The Lower Court made a mistake because Pro se was unable to submit genuine disputes that were supposed to be discovered in the Pro se's supplemental request, including request 4. where the Jason Tant email would have been

submitted and the Lower Court failed to question the circumstances and the argument that was submitted by Attorney Davis that the Pro se's supplemental discovery was simply reasserted no's 4, 6, 7, 8, 11 & 15 which were relevant business discoveries that were never produced & Admit 15 was a completely new request. Again the Jason Tant email, wasn't produced and the Lower Court all of a sudden starts discussing Judge Jefferson, this was a mistake. **Exh R. p.7., 4. thru p.10., 20. & p.3., 9 - 23. 60 (b)(1)((3) 56 (d)(e)(1) (f)(g), 56 subd.(e)(4), Haines v. Kerner (1972), Baughman v American Tel and Tel. Co. (1991), Earle v Mcveigh (1875) & Exh X, Y**

22. **Exh. R, p. 19, L. 3-20** Lower Court made a mistake by interrupting Pro se before he finished submitting his evidence "it doesn't say anything about what they did to" again Pro se wasn't able to finish with; legally discover where the sprinkler system was before they began digging 100 feet through the front yard & about 30 feet in the right of way which was a duty to be performed by the cable company while abiding by the local and state laws. If Pro se hadn't been denied a copy of their memorandum he would have submitted their new photo that proved Knology owned the lines & owed a duty to the Pro se who was legally walking in the right of way. 60 (b)(1)(2), 56 (e) & sub. (e)(4) & **Bramlette v Charter-Medical-Columbia (1990).**

23. On 4-1-15 the day before the Motion for Summary Judgment hearing, Pro se was waiting in the hallway for a meeting in Lower Courts chambers, with Attorney Ben Davis. Pro se had asked where was their memorandum for MSJ and he responded that

he had mailed it this morning. Pro se 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 Pro se told the Judge 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 **Exh. K.**, p.1. & motion to Recuse Judge Dennis on first page & 56 (c)(g) the Pro se wasn't allowed to serve opposing affidavits 2 days before the MSJ, because of the bad faith by Attorney.

24. Lower Court may have made a decision to grant summary judgment because of the information the Defendant may have disclosed in their memorandum and because of this mistake by the Lower Court the Pro se non-movant was denied his right to obtain the same relevant facts the Court had read before the MSJ hearing which was a mistake. The Courts mistake is a genuine issue of dispute because the facts were not available to the non-movant. Also pursuant 56 (c)(g) and Pro se was denied his right to serve opposing affidavits no later than 2 days before the hearing. This was a mistake caused by the Lower Court and it rendered the Pro se's motion premature and the Court also abused it's discretion, because the Pro se wasn't heard pursuant **Black v. Lexington School Dist.**

(1997), **Baughman v. American Tel. and Tel. Co. (1991)**, **Hamilton v Miller (1991)**, **Baughman v American Telephone Comp. (1991)** & 56 (b) (d) (e)(1) subd.(e)(2) & Rule 60 (b)(1)(2)(3) (d)(3) & subd. 60 (e)(4)(h).

25. **Exh. R. p.11** no. 23-25 thru p. 12, no. 1-6 Lower Court made a mistake when it allowed misrepresentation and misconduct by Mr. Davis when he told Mr. Powell he had

mailed their memorandum that morning instead of hand delivering it before their meeting in the Lower Courts chambers and Attorney Davis should have been asked why did you mail it when you knew you were meeting Pro se in the Judges Chambers? Lower Court should have known Pro se would be at a disadvantage and apparently it had a copy or was given one after the Pro se left the meeting. Because the next day during the MSJ hearing, The Court 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. Because of the Lower Court's mistake the Pro se was denied their new evidence and the Court abused it's discretion when it denied the Pro se's right to have and read the same memorandum the Court had read before the MSJ hearing. The Lower Court should have known it made a mistake.

26. 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 their new evidence that was a mistake, misrepresentation, misconduct & extrinsic fraud. 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) & 56 (c)(3) (d)(1)(2)(e) (3) (e)(1)(2) (f)(g)(h)

subd. (e)(2)(4) (h), 15 (c)(1)(b) & 60 (b)(1)(2)(3)(4) **Baughman v. American Telephone Co. (1991).**

27. Therefore if the Defendant had submitted their new photo that proved they were on the property after the Plaintiff was injured and he had received the Jason Tant email, the Defendant would have been denied their MSJ & the Pro se would have been granted summary judgment just minutes earlier during his 2nd MSJ. 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 & **Exh K**, bottom of p.4 & 5. Underground Conduits, Cables & Wires in Public Right of Way and Section 30-14-148 & 30-151 & also **Ned v. Hertz Corp. 356 So. 2D 274 (La. App 4 Cir. 1978)** 60 (b)(1)(2)(3)(4).

28. **Exh. R**, 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 the Lower Court submits this case is about the issue of whether Knology buried their lines and installed them properly. Lower Court also erred because Pro se had submitted evidence in his Complaint and in his **Exh K** where Knology intentionally failed to acquire the required Encroachment Permit and they also violated the following laws & ordinances. **Exh K**. bottom of p. 4-5 & p.17&18 &Exh. J & K of Pro se's motion for reconsideration p.8. & motion to compel p. 4, no. 14, p. 8, 9, 10 & S.C. Code of law 58-12-10, 50, 70, 310 (e)(2), S.C Code of Ordinances Section 30-151 & 154 & 56 (c)(1) because Defendant disputed their own denial the lines were theirs & their negligence was the most likely

cause. Pro se motion for reconsideration p. 10, **Ned v Hertz Corp.** 356 So. 2D 1074 (La. App.4 Cir. 1978), **Bramlette v Charter-Medical-Columbia (1990).**

29. **Exh. R., p. 15, L. 1 thru p. 16, L. 5.,** Lower Court states "if you installed the cables, you are responsible" and Lower Court erred because it failed to recognize their intent to not bury the lines because of the pressure to finish the job that day & Defendant submitted evidence they connected 2 cable lines to units A&B & Mr. Powell tripped over their lines in the right of way that were connected to units A & B. Defendant admitted the lines were theirs in Pro s Motion for recon. **Exh I, Admit 1. Exh K. p.9 & Lower Court** made a mistake because of the unread prehearing evidence and also the Court should have known there were genuine disputes because of the unproduced supplemental request that included the Jason Tant email, that would have resolved this genuine dispute. **Exh K. p.15, no. 6, 7, 8, 11., p.17. 1., 2, 7, 10,12, 15.** Court abused it's discretion. 60 (b)(1)(2)(3)(4) **Baughman v American Tel. and Tel. Co (1991), Earle v Mcveigh (1875). Exh. Z-1 & 2**

30. Lower Court made a mistake when it didn't deny Defendants motion because they just admitted their original accounts A&B were connected to their lines and also the lines could potentially be theirs. But their records show, because of ASAP there was a dispute of whether they performed their duties properly and this was a genuine dispute because they only "believe" their lines were buried properly. **Exh R., p. 14, L. 1 thru p.16., L. 5. & Exh K, p.2 no.10., p.3, prod. 7., p.7&9., admit 1. & p.10 Admit 2. & Exh Z-1 & 2**

RESPONSE; Defendant admits upon relief and belief that the lines were

originally installed properly.

Defendant just admitted there is in fact a genuine dispute because they believe the lines were buried. Lower Court erred because the Jason Tant email proved they didn't.

31. Exh. R. p.16, L. 14-25 thru p.17, L. 1-13 Transcript is wrong because Pro se stated Knology did not acquire a permit L. 6 & 7 and the Lower Court made a mistake by failing to question the law the Defendant had broken, which proved Defendant did in fact exercise intent and they owed a duty to Mr. Powell. Also the SCDOT would have easily discovered Knology failed to bury their lines in the right of way during an inspection.

Exh K, bottom of p. 4 & 5. also p.18 & motion for reconsideration **Exh. O**.

32. Exh. R. p. 7, L. 4-9, Lower Court made a mistake when it failed to ask whether these were just reasserted and why didn't the Defendant answer it's ordered supplemental request? Court should have asked Defendant to answer at least one of it's supplemental requests like production 4., because the discovery so far was insufficient. Lower Court erred by inadvertently changing the subject from the relevant genuine issue of the preponderance of undiscovered evidence in it's ordered supplemental to explaining to Pro se 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 and furthermore Rule 56 (d)(h) subd. (c)(1)(a)(b) (2) (e)(2)(4), 60 (b)(1). Lower Court erred when it denied the Pro se access to the email from manager Jason Tant that proved Knology was liable for Mr. Powells pain and suffering. **Exh X, Y**

33. **Exh K.** Prod 6. on Exh H. Pro se needs documents of Knology's monetary offer from their upper office and Pro se notified the Lower Court during the hearing that he was just told manager Lee Endicott wasn't working at Knology anymore. **Exh. R. p.21,** 1-9 the Lower Court erred because it wasn't concerned about the significance about their manager's departure and the Defendants evasive responses concerning these documents until the Pro se didn't have an affidavit. Pro se didn't need one to prove what was already stated under oath by manager Lee Endicott. Lower Court stated it "read it" and it was the Courts duty to read the Pro se's motion for reconsideration p.3&4., Exh. N. and Pro se's memorandum in support for MSJ p. 6., Production request 6.

34. This motion was premature because the Lower Court made a mistake because it should have known the Pro se was at a disadvantage because affidavits are not mandatory with a MSJ if documents are being submitted as evidence for the court to consider with the motion and they must be identified and authenticated by a witness with knowledge of them. Therefore Knology's manager Lee Endicott answered "the amount in controversy" and this was an identified and authenticated statement that was produced to Mr. Powell as fact by the witness, Defendant Attorney Benjamin Davis. Manager Endicott's statement was in itself a genuine dispute because it admits the duty that was owed by Defendant. This wouldn't have been an issue during the MSJ hearing if Pro se had properly received his supplemental production request that included Knology's Operations Manager Jason Tant email that Manager Lee Endicott was aware of, pursuant (60 (b)(1)(3)(4) for the

Court's mistakes & 56 (f) (g) & 56 (c)(3) (c)(1)(b) (d)(1)(2)(3) subd. (c)(1)(2) (e)(1)(2) (3)(4) (f) (h) & 6 (b) & 28 U.S.C. ~ 1746.

35. But during Pro se's defense of a MSJ hearing on 7-30-14, case 2013-CP-10-5351 the Lower Court granted them Summary Judgment, because it was a big deal that the Pro se failed to respond to the Defendants memorandum in support of MSJ. This "big deal" wasn't even considered during this MSJ hearing because the Court didn't even question the failure of the Defendant to deliver their memorandum pursuant 56 (e)(f). Pro se didn't have reasonable time to read and prepare his argument to respond to their memorandum that the Lower Court had read. Pro se was denied his right to discover their new photo which became Pro se's newly discovered evidence. **Exh V., p.9., 3-7., p.17., 11-20., p.14. 10 thru p.15., 1-10. and Pro se's Motion to Recuse p.1, para. 3. & Exh R. p.11 no. 20 thru p.12. Rule 60 (b)(1)(2)(3)(4) for mistake, misrepresentation, surprise & misconduct. 56 (d)(1)(2)(3) & 56 subd. (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 Pro se his response to production which was incomplete. During Knology's compelled evasive responses, the Lower Court ordered Pro to supplement his requests for Admit & Production. During this MSJ hearing on 4-2-15 Pro se notified the Lower Court that the Defendant failed to answer properly again which revealed there were still disputes. Lower Court failed to question Defendant about their second failure

to respond properly to it's ordered supplemental production request no. 4 that included the email from Manager Jason Tant. 60 (b)(1)(3), 56 (1)(2)(3) & subd. (e)(1)(2)(4) **Exh U**

37. See **Exh. R, p. 3, 9. thru p.4, 25.** Pro se explained to the Lower Court 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. Pro se was ordered by the Court to submit a supplemental request which was how it was factually resolved because Defendant didn't properly respond to production and that was why the Lower Court ordered the supplemental request. Lower Court erred when it failed to ask Defendant if they were supposed to return the discovery before the MSJ hearing and then it made a mistake by failing to deny this MSJ, because it was premature. The Pro se never received prod. 4. that included the technicians name who Jason Tant ordered to remove their lines. **Exh K, p.7, Exh T, U, X**

38. Pro se was denied a full & fair opportunity to complete discovery because of bad faith & the Lower Court ordered the supplemental request because it 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), subd. (c)(1)(b), 37 (a)(3)

39. **Exh R, p. 5, 1. thru 20.** Lower Court firmly repeats and after Pro se agreed the

first time, the Court continues it's firmness towards the Pro se. Pro se stated Mr. Davis was trying to confuse the Court and then the Court stated "I'm not confused at all." Pro se submits the Lower Court made a mistake because it had the file when it stated it appreciates Plaintiffs position. Pro se also submits the Court was mistaken because the Defendant didn't respond properly to it's ordered supplemental request & submit the Jason Tant email & their new photo. 60 (b)(1)(3) & 37 (a) (3), 56 (c)(1)(a)(b) (c)(2)(3) (d)(1)(2)(3) subd. (c)(2)(3) (e)(2)(3) **Exh X-Y**

40. Exh. R, p. 5, 21. thru p. 6, no. 6. Lower Court made a mistake when it denied the Pro se's 2nd MSJ and granted the Defendants MSJ on 4-21-15 after Pro se disclosed the Defendant had not returned the supplemental discovery the Court had ordered. Therefore the Lower Court erred when it failed to ask the Defendant why didn't they return it's ordered supplemental discovery properly and then the Court failed to 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), subd. 37(a)(3) (c)(2)(3) (e)(2)(3) & 26 (b)(1). **Exh. X,Y**

41. Exh R, p. 6, no.8-20 where Lower Court erred when it failed to understand that discovery is the major ongoing issue in this case, other than Lower Court being unsure about what has transgressed during these hearings concerning the ordered & unproduced production that proved 100% Knology owned the lines. The Lower Court tells Pro se he needs to file a motion to produce, that he already filed on 6-10-14 & Admit on 6-16-14. See Charleston County Court of Common Pleas Index and the Lower Court heard the

compelled cases on 7-30-14. The Lower Court made a mistake by ordering the Pro se to submit a supplemental request again, because the Court should have been questioning the Defendant why they hadn't produced their ordered supplemental Production that included the Jason Tant email. 60 (b)(1) & 56 (b)(c)(3)(d)(1)(2)(3) (e)(1)(2)(4) subdivision (e)(2)

42. Exh R, p. 6, L. 11. thru p.7, L. 12. Pro se discloses the letter from his **Exh K, p.13**

where the Defendant admitted Pro se was ordered to supplement his discovery and they were never produced properly. Mr. Davis admits in his email that he would be happy to respond to supplemental discovery, but otherwise I referred him back to our original answers from July. Again, Lower Court errs when it failed to ask, to see the evidence that Pro se was referring to which was his order to supplement on 7-30-14. This was a genuine dispute, because the Lower Court failed to continue or deny the MSJ after it was notified of this evasive discovery tactic that denied the Pro se a right to plead his case with the discovery that included the Jason Tant email. Therefore this rendered the motion premature. **Exh R, p. 7 & Frederick Hart & Co. Inc. v Recordgraph Corp.**

F.2d 580 (3d Cir. 1948): **United States Kolton T/a v. Halpern**, 260 2d (3d Cir, 1958

& 60 (b)(1)(3) & Rule 56 subd (c)(1)(2) (e)(2)(3) & Rule 6 (b) 37 (a)(3). **Exh X.**

43. Exh R. p. 7, 10-21 Judge Dennis again stated that the Pro se Plaintiff hasn't filed a motion to compel & Pro se responds that he had before July 30.th Then the Lower Court states; "Now, be careful what you're saying" and repeats "Because that's what Mr. Davis just said" and earlier he was stating what he "believes." Pro se submits the Lower Court

made a mistake because Attorney Ben Davis was incorrect and this revealed a genuine dispute, because Pro se had not properly received Lower Court's Ordered supplemental Production 4. that included the Jason Tant email. 60 (b)(1)(3)(4) 56 (e)(f)Fed. 56 (c)(1) (A)(B) (d)(1)(2)(3). **Exh. R, p.13, Exh X, Y**

44. Exh. R. p. 7, L. 22 thru p. 8, L. 1-17 Just before Pro se's motion to compel hearing on July 30th 2014, for Incomplete Answers & Evasive Admissions & Production. See Pro se's Motion to Recuse p.2, para 3 & Pro se's 2nd MSJ **Exh. K, p.8-17**. Mr. Davis was finally contacted about returning the production request and tries to evade answering the supplemental request that included the email from Jason Tant. 60(b)(1)(3) 56(c)(1)(b) (d)(1)(2)(3) 37 (a)(3) & **Baughman v American Tel. And Tel. Co. (1991), Exh. R. p.13**

45. Exh. R, p. 8, 18-25 Lower Court makes another mistake when stating "Then you need to be specific as to what it is you think that he should give you" which is what the Pro se was ordered to do on 7-30-14 and then "you haven't done that" and now Pro se is firmly told "I'm telling you that your going to file a supplemental request that says I want these" "not just give me all documents." The Lower Court still doesn't understand the Pro se was already ordered to do this on 7-30-14 and this is exactly what the Pro se had requested. **Exh. X.**

46. Again the Lower Court made a mistake when Pro se was firmly pressed and the Court failed to allow him his right to discover & submit the Jason Tant email. 60 (1)(2) 37 (a)(3), **Earle v Mcveigh (1875), Baughman v. American Tel. and Tel. Co. (1991),**

Black & Lexington School Dist. (1997) 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. **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.

47. **Exh. R, p. 9, thru p.10, 7.** Pro se submits he followed the Lower Courts Order and the Court made a mistake and this was an ongoing dispute. The Lower Court strongly confronts the Pro se when firmly stating "right now" and because of this action the Court abused his discretion. See; tendered; **Exh. R, p.9.**, 15-22. 60 (1)(4), 56 subdivision (e)(4) **Black v Lexington School Dist. (1997)** & Plaintiffs motion to compel & **Exh. R, p.9-12.**

48. See Plaintiffs **Exh. K. p.9.** 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. Lower Court erred when he failed to realize Defendants new photo was submitted in the next to the last page of their memorandum in support for MSJ was new evidence that proved they were on the right of way after 6-21-12 and this improper evasive tactic was allowed by the Court and this was a mistake because it allowed the Defendant to submit an alternative defense. **Exh. R.**, p.15., 12-25 & p.19. 1-25, specifically line 21. where the Lower Court also admits it doesn't know exactly when Knology removed their lines. This was a crucial mistake by the Court to grant summary judgment because of the unproduced document request which reveals

there was and still is an ongoing genuine dispute about when the lines were removed and this wouldn't be a dispute if the Pro se wasn't denied his right to receive the unproduced Jason Tant email.

49. Their photo was taken in the opposite direction of Pro se's photo **Exh A** & now easily seen is Comcast's single line running directly across the right of way and it is now much closer and is now more visible that it was partially buried, compressed into the ground, undisturbed and revealed as irrelevant. The line was coiled in the direction of the unknown Knology representative who was taking the photo and it was also coiled undisturbed in the direction Mr. Powell 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 and then rebury itself before Knology took take their photo before Comcast arrived to remove their line on 6-23-12, only 2 days later.

50. 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.

51. Therefore, the Lower Court erred because it failed to recognize the facts when it read the Defendants memorandum and saw a new photo and alternative defense that was submitted with the photo. The Pro se was denied his right to read this alternative defense it and submit his argument during this MSJ hearing. Pro se wasn't allowed a full & fair opportunity to complete discovery and to be able to see & use their new photo during the MSJ hearing to prove their negligence along with the Jason Tant email. See Production 16. of Plaintiffs motion for reconsideration p. 7 and 12. on P. 5. and Prod 7. Exh S. and Plaintiffs; See **Exh K.** p. 4, 2nd para., Defendants response 7., p.7. top and p. 15 & 17 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 taken after 6-21-12 and if the lines didn't belong to Knology as they argue, then why and who removed the lines when Knology, Comcast and Mr. Powell were the only people who had knowledge about the phone call notifications?)

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.

52. Therefore, the Pro se submits attorney Benjamin Davis responded with an untruth by changing the date in question 25th to 21st purely to pursue his pattern of the 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 after 6-21-12. Lower Court also made a mistake when it allowed these evasive responses before and during the MSJ hearings only to evade submitting the Jason Tant email properly. See Rule 60 (b)(1)(2) 56 (h) subdivision (c)(1)(a)(b) (e)(2)(3) 37 (a)(3) & **Baughman v American Tel. and Tel Co. (1991)**

53. **Exh. K. p. 10, 1-25** Pro se acknowledges he mailed his supplemental requests on 2-20-15 and Pro se never received a proper response. Therefore, the Lower Court again made a mistake because it should have denied their MSJ, because of the Defendants intentional failure to produce, the motions were rendered premature. Lower Court made another mistake when Pro se was told to file the same motion to compel he had already compelled on 7-30-14 and the Court erred because this was the 7-30-14 Court ordered to supplement the Admissions and Production that was in the Judges the hand. Also the Judges laptop was open and the motion to compel was listed on the Charleston Clerks Index where the same Court had presided over the compel hearing on 7-30-14. This was a genuine dispute and mistake, because the Defendant should have been ordered to follow

proper discovery procedures and produce the production of the Jason Tant email that should have already been discovered on production request no. 4. and again this was a mistake. 60 (b)(1)(3), 56 (c)(3)(d)(1)(2) & subd. 37(a)(3) where an incomplete or evasive answer is to be treated as a failure to respond and true. Also Admit 15. because the Court abused it's discretion pursuant **Black v. Lexington School Dist. (1997). Exh X, Y**

54. Exh. R., p. 17, L. 14-19 thru p. 18, L. 1-4, Pro se has submitted multiple times back and forth with the Court about this ongoing discovery dispute and that was why the Pro se wasn't able to prove 100% the lines belonged to Knology. The Lower Court again doesn't question or enforce proper discovery responses and made a mistake because if it had enforced proper discovery procedures Pro se would have had the Jason Tant email and Pro se would have been granted summary judgment just minutes before Defendant was scheduled to have their MSJ. 56 (C)(1)(a) (3)(D)(1)(2)(3) & 37 (a)(3) **Exh X, Y**

55. Exh. R., p. 18, L. 5 thru p.19, L. 20, Pro se tries to submit evidence that proves 100% Defendant owned the cable lines, because Knology has 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. More importantly is the fact that the Lower Court made a mistake when the Defendant was permitted to evade producing production 4. and 6. The Pro se was denied his right to receive & submit this Jason Tant email to the Lower Court, that would have proven 100% Knology was at fault for Pro se's injuries.

56. Pro se is interrupted twice so he is unable to make his argument because the

Court asks questions that changes the subject while Pro se is trying to submit evidence of the broken laws and ordinances violated. **Exh R., p.19**, L. 17-20 where the Pro se is submitting a genuine dispute about the supplemental request and the documents that hasn't been produced and would have revealed the Jason Tant email. See Pro se's Motion for Reconsideration **Exh. O. & Exh, K.** p.4-5. The Lower Court made a mistake pursuant 60 (B)(1)(2)(3)(4), 56(c) (b) (e)(1) subd. (c)(1) & Rule 6 (b) & **Haines v Kerner (1972)** & **Earle v Mcveigh (1875).** **Exh X, Y**

57. Again, the Lower Court interrupted with "What evidence do you have that this is their cable?" And if the Defendant hadn't been allowed to evade producing the Courts ordered supplemental request the Pro se could have responded with the Defendants new photo submitted in their memorandum that proved they were on the right of way after 6-21-12. The Pro se could have also responded with his new evidence from Knology's Operations Manager Jason Tant email that stated; "I also want to let you know that we immediately went out and removed the lines except for one, it was a Comcast line feeding the lawyers office" and this email was sent to Mr. Powell on 6-28-12. But, Pro se did not discover he had this email until after the Order for Summary Judgment was signed and this would have proven the unburied cable lines belonged to Knology. **Exh R. p. 19., 7-8., p.18., 5-7 and p.16., 6-10**

58. If the Defendant had produced properly the second time or the Lower Court had ordered the Defendant to answer the supplemental production 4. & 6. during the MSJ hearing, they would have produced the Jason Tant email and then the Pro se could have responded with the 100% of negligence. **Exh. K. p.15., 7 & 11. & p.17. 1., 10., & 15.** Therefore the Pro se wasn't given a full and fair opportunity to respond with the ordered

supplemental request that would have produced the Jason Tant email that would and should have resolved all these disputes and also the Defendant never submitted any evidence from their accounts units A & B that another cable company had a contracted service with them . This was a mistake by the Lower Court 56 (c)(3) (d)(1)(2)(3)(e) subd. (e)(2) 37 (a)(3), 60 (b)(1)(20, **Baughman v American Tel. and Tel. Co. (1991)**, **Earle v Mcveigh (1875)** and **Frederick Hart & Co. Inc. v Recordgraph Corp. (3d Cir. 1948)** **United States ex rel. Kolton v. Halpern (3d Cir. 1958)**).

59. The Lower Court received the Defendants memorandum and the Court knew the Pro se didn't receive one. **Exh R. p.11.**, 17. thru p.12., 6. "You did and your memorandum is incorporated fully for the purpose of review should that become necessary" furthermore the Court read and saw the new evidence before the hearing, but the Pro se wasn't allowed to. Also the Lower Court made a mistake when it overlooked the Defendants evasive tactics that caused the Pro se to be at a disadvantage during the hearing. Defendant new their photo only proved they were on the right of way to remove their 2 cable lines. 60 (b) (1)(2) 56 (d)(1)(2)(3), (E)(1), also **Earle v. Mcveigh (1875)** and **Baughman v American Tele. And Tele. Co. (1991)**).

60. Defendant stated they hadn't been on the right of way since 2009 and their new photo **Exh S.** proved their negligence because they were, and this was an attempt by Knology to confuse and cover up the facts. See Pro se's motion for reconsideration p.7., Production 16. where Defendant responded with their fraudulent tactic to change the dates

so they wouldn't be admitting to being on the right of way like the Jason Tant email and their new photo in their memorandum that proves they were there. Furthermore, the Lower Court made a mistake and allowed this misconduct by Attorney to continue all the way through the 2 MSJ hearings. 60 (b)(1)(2)(3), 56 (h).

61. Mr. Davis also stated Plaintiff only alleges that 2 of the unburied cables belonged to Knology and "makes no assertion to the third" Pro se wasn't able to respond with the facts about the ownership of the other cable line that was in the Defendants new photo, because he wasn't allowed to see their memorandum before the hearing. This never was an issue until this tactic was exercised and the Pro se had already stated in his Complaint on p.1, para 3 "After investigating, the "2" Knology unburied cables lines" which means Pro se had a reasonable reason to contact Comcast because the Pro se was unsure which cable company owned the 3 lines. So Mr. Powell and his daughter met with 2 Comcast representatives and after their investigation they determined the short single line running directly across the right of way and compressed into the ground because of pedestrian foot traffic stepping on it was theirs.

62. The Comcast line was connected to the lawyers office next door and it wasn't stretched out in the direction the Pro fell, which is the other side of the line where Pro se's photo was taken, **Exh A**. Furthermore the Comcast cable line was almost completely buried, undisturbed as shown in Defendants new photo **Exh S**. The photo was submitted purely to create an uncontested alternative defense, because Defendant never submitted

this photo during the previous the discovery request or during the ordered supplemental request that the Pro se never received.

63. Defendants new photo proved the Pro se's foot was unable to step under the line and be tripped to the ground. It was obvious there were no roots on the worn path that could have caused the Pro se to trip and fall. After the meeting with the 2 Comcast representatives, they stated they would send someone out the next day to remove their line because there wasn't any real concern about it's danger, because it was almost buried. Furthermore, Knology manager Lee Endicott was also notified and their new photo was taken before Comcast removed their line the next day. The Lower Court made a mistake and allowed the Defendant to pursue evasive and fraudulent tactics that enabled them to evade producing company documents that consisted of the Jason Tant email and their memorandum that included their alternative photo. The Court would have had no choice but to grant Pro se summary judgment during Pro se's 2nd MSJ because this evidence would have proven Knology was on the right of way after 6-21-12 and removed their 2 unburied lines. See **Exh. R. p.3.**, 1-23. & **p.6.**, 1.-20. 60 (b)(1)(2)(3)(4)(6) (d)(1)(3) 56 (f)(g) FRCP (d)(1)(2)(3) (e)(1)(4) (f)(1) & (h).

64. **Exh. R. p. 19**, L. 9-16 Pro se had notified Lower Court that there was a production request for all documents, which would have included Knology's emails that would have produced the Jason Tant email that proved Knology was the owner of the 2 lines. Also it would have included Knology's monetary offer for a settlement for Pro se's injuries during

the meeting with Lee Endicott which was part of Pro se's complaint about not receiving the supplemental discovery. **Exh. Z-1 & Z-2**

65. Then the Lower Court made a mistake when failing to read Pro se's 2nd motion for summary judgment and then ask during the MSJ hearing, what documents & realize their motion was rendered premature, because the Pro se had notified the Court about this in his **Exh K. p.1** last para thru next page no.1 where Pro se's supplemental request will be answered. Also p.4., 2nd para., Prod 8. will be properly answered by 3-22-15 & p.7 first para., 56 (b)(1)(4)(6) (c)(3) (d)(1)(3) 60 (b)(1)

66. **Exh. R. p.19. L. 17-25** Lower Court again hears about the supplemental request, that wasn't produced properly and then the Court errs when questioning "remove the lines?" which should have been answered during their production of request 4. **Exh. L** the Jason Stant email and also the Court was questioning when their lines were removed, which proves this is a genuine dispute. **Exh K**, p.2, & Admit #10, p.10-12, 15 & 17. 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, or produced the Pro se's complaint about his injury to Jason Tant. See Pro se's motion for reconsideration **Exh O**, where Defendant stated they did not receive any complaints, notices or reports from anyone concerning accidents, which was an untruth that was concealed by the Lower Courts failure to enforce their ordered supplemental request. Therefore Pro se request the Lower Court to impeach the

Defendant and grant this Motion for Relief pursuant Rule 60 (1)(3)(3) (d)(1) See **Exh R. p.13**, 1-13. Only Knology knew exactly what time they were on the right of way after 6-21-12 to remove their lines. See **Exh K., p.9**, Admit 1. & **p.15**. Production 7. & **p.17.**, 10. & 15.

67. Pro se submits the Lower Court is also unsure if Knology owned the lines by the way it asked "Removed the lines?" and the Court should have known from discovery they removed their lines after the accident, because of the evidence that was submitted in the Pro se's **Exh K., p.7**, Admit #1 where Defendants admits their lines were connected to units A & B and the Pro se was expecting to receive the production to the supplemental request no. 4. Also p.9., 1., p.10., 2., "belief their lines were originally installed properly" which created a genuine dispute and then another dispute arose out of the conduct that was brought to light from discovery after the MSJ was granted pursuant 15 (c)(1)(b).

68. Then the Lower Court proved again there were multiple genuine disputes when it asked who removed the lines? The Court made a mistake when it saw the new photo in the Defendants memorandum and the Pro se was denied his right to see the same photo that proved Knology was on the right of way after 6-21-12. Pro se was denied his right to prepare his argument for the MSJ hearing the next day. 60(b)(1)(2)(3)(4)(6), 56(c)(1)(a) (b) (c)(3) (d)(1)(2)(3) (e)(1). **Bramlette v. Charter-Medical-Columbia (1990)**, **Earle v Mcveigh (1875)**, **Baughman v. Smerican Tel. and Tel. Co. (1991)** & **Hamilton v. Miller (1991)**, **Exh X.**

69.

SUPPLEMENTAL ADMISSION REQUEST

Mailed on 2-20-15 to respond by Plaintiffs

Exh K, p.16-17.

#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, Pro se submits that this is a genuine dispute because Defendant 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; ?

70. The Defendant never answered and this was a genuine issue of dispute and the Lower Court should have ordered this Admit and the other supplemental Production to be

produced during the MSJ hearing or the motion should have been denied after Mr. Powell tendered it to the Court. 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. There wasn't proper production of official state, county & 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 email from Knology Inc. Operations Manager Jason Tent that proved 100% Knology owned the 2 unburied cable lines. See Rule 56 (d)(1)(2)(3) (f)(g) subdivision (c)(1)(e) (3)(4), 60 (b)(1), 37 (a)(3) & **Baughman v. American Telephone & Telegraph Co. (1991), Black & Lexington School Dist. (1997), Earle v Mcveigh (1875)**

71. **SUPPLEMENTAL PRODUCTION REQUEST TENDERED**
 TO JUDGE DENNIS DURING MSJ HEARING
 Exh R. p.9., L.1-25 & Exh K. p.14-15

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

Pro se submits proper response would have included email 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.

This was responded under oath & the Lower Court erred because the Pro se didn't need an affidavit to prove Manager Endicott's monetary offer. This was a genuine dispute

because the Court allowed Defendant to evade producing documents for this request.

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

This should have been answered by Jason Tant since he was Knology's Operations Manager, because he is the manager that sent someone there to remove their lines.

8. Respondent stated they would supplement this response upon reaching it's conclusion and the Pro se submits Defendant never did, even though they were on the property and took a photograph before they removed their lines. Therefore the Lower Court erred when allowing this improper evasive manner to continue during the MSJ hearing after Pro se stated Defendant will not answer discovery which included the Courts ordered Supplemental Request, while pressuring Pro se 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 the Lower Court the Defendant was permitted to evade answering the questions they expected Pro se to answer during the MSJ hearing. Pro se was unable to do so, because Defendant was allowed to not respond properly with the Jason Tant emails.

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 Lower Court made a mistake when it 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 because it was their duty pursuant state, county and local laws. The Pro se could have submitted these violations of state and local laws that require a duty from Knology to protect pedestrians in the right of way in his Response to the Memorandum, if he had been permitted to do so. The Lower Court failed to recognize all of the genuine disputes and failed to allow Pro se to receive production of the Jason Tant email that proved their duty.

72. **Exh. R. p. 20-21.** L. 1-25 thru 1-8 Lower Court erred because it was on the first page of the Plaintiffs Complaint and the Lower Court should have read it after the Pro se Plaintiff stated it was in his Complaint instead of the Court stating incorrectly "No, it's not," when it was. Then Pro se could have directed the Lower Court to see this meeting took place in his ordered supplemental production request no. 6, also located in Pro se's memorandum for MSJ p.6 and **Exh K., p.15** no. 6. that was asked under oath by the Defendant's attorney. **Exh X, Y**

73. Therefore, the Pro se did not need an affidavit to prove to the Lower Court this meeting took place, when Knologys manager made the monetary offer. 60(b)(1) this was a mistake by the Lower Court when it failed to check and read Pro se's Complaint before and during the MSJ hearing. Complaint p.1., 3rd para., **Exh K p.2**, no.1 & p.4., 2nd para where Pro se states "therefore will be properly answered during Plaintiffs supplemental request or Plaintiff will request the court to charge the Defendant with contempt, pursuant

56(g) affidavits made in bad faith & 28 USC 1746 a formal affidavit is no longer required.

74. The Lower Court made a mistake because it should have read their ordered supplemental request and the Court should have denied the MSJ because Defendant did not produce what the same Lower Court had ordered on 7-30-14. **Exh.Q., p.2**, 10-18., Pro se submitted the supplemental and all of the documents were unproduced, including their no. 4 & 6 which allowed Defendant to again evade producing the email from Jason Tant and documents from Knology's home office concerning manager Lee Endicott, that would have resolved these genuine disputes that was ongoing before and after the MSJ. See Rule 60 (b)(1)(2) 56 (c)(3) (d)(1)(3) (e)(1) (f)(1) (h), **Exh L, T, X, Y, Z-1, Z-2**

75. The Pro se was very surprised the Lower Court 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 under oath "the amount in controversy." The Lower Court had this evidence available and after Pro se stated "my wife called the next day after I was injured" Lower Court erred because it interrupted and was also incorrect when stating; "Well, I'm sure you don't." Complaint p.1, para 3 & Lower Court has made a mistake and the dispute continues about an affidavit that wasn't necessary.

76. Also Pro se requested all the documents to resolve this dispute concerning the meeting with manager Lee Endicott, which turns out to be a genuine dispute caused by the Lower Court and then it ruled improperly. 60 (b)(1) mistake and a surprise because Lower Court looked at the Complaint on it's computer that was available to establish if the

Pro se's statement was correct and the Pro se was correct. But, the Lower Court never acknowledged this finding. Rule 56 (e)(f)(g) & Federal 56 (d)(1)(2)(3) (e)(1).

77. **Exh R. p.21**, thru **p.22** 1-2. Pro se discloses information submitted by Mr. Powell concerning manager Lee Endicott and again the Lower Court is notified that the Defendant never produced the documents and why the Pro se was offered the money and then the Lower Court states "Okay." The Court erred because it 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 this is why the Defendant didn't properly respond to the ordered supplemental request for documents. This was a genuine dispute overlooked by the Lower Court which was effecting the Pro se's right to have a fair & impartial hearing, because he can't prove 100% the cable lines belonged to Knology without the production of the Jason Tant email & the Court erred because these were genuine disputes that prove their liability pursuant 60 (b)(1)(2)(3) mistake, surprise, excusable neglect & new evidence and Federal Rule 56 (c)(3) (d)(1)(2)(3) (g). **Baughman v American Tel. and Tel. Co. (1991), Earle v Mcveigh (1875), Hamilton v Miller (1991), Haines v Kerner (1972)**

78. Also the Pro se was denied his right to submit another statement in his behalf after Lower Court stated "Well I'm sorry about that" and then the Pro se became confused & apprehensive while the Court continued to make mistakes concerning their proper procedures of discovery that should have revealed the Jason Tant email. 60 (b)(1)(2)(3) & Rule 56 (d)(1)(2)(3) (e)(1)(4) subdivision (e)(4) & pursuant **Haines v Kerner 404 USS**

519, (1972).

79. **Exh. R. p.22**, 3-24 Lower Court never asked earlier which Production request was this, which proves Pro se's argument and he should have read #6 in the Plaintiffs Complaint, motion for reconsideration & Pro se's memorandum in support for summary judgment p.6., no. 6 & **Exh. K. p.15**. Lower Court is firmly asking the Pro se about a deposition to prove this meeting took place and he states "no statement" and "there's no statement other than your statement, correct?" Pro se is confused & apprehensive and he responds; "I think I've got it in one of my production questions" and the Pro se did submit the Lee Endicott issues in production no. 6 and then the Lower Court responds firmly and continues to ask about a sworn statement when the Court should have read their response "the amount in controversy" which proves the offer was made by Knology's Manager Lee Endicott and this was supposed to be a sworn statement. But, this wouldn't have even been an issue if the Jason Tant email had been properly produced before the MSJ hearings.

80. This was a mistake, surprise & excusable neglect pursuant 60 (b)(1) 56 (f) and (g). The Pro se had set forth specific relevant facts that were genuine disputes. 56 (c)(1)(a)(3) (4)(d)(1)(2)(3) (e)(1) and it is evident that the Lower Court was overly concerned about an affidavit, because this issue would have been resolved if the Lower Court had been just as concerned about why the Defendant didn't produce it's ordered supplemental production request no's 4 & 6, so the court could discover the genuine facts concerning the monetary offer and the Jason Tant email which would have proved their liability. The Court failed to

realize the motion was also rendered premature because of the failure of the Pro se to completely understand what was expected from the affidavit pursuant **Haines v. Kerner (1972), Earle v Mcveigh (1875)** 56 Subd. (c)(2) (d)(2) (e)(4) a formal affidavit is no longer required. 28 U.S.C. 1746.

81. Pro se tries to explain the meeting again and the Lower Court again says "yes" but the demeanor means no, so Pro se is again apprehensive, frustrated and now he is confused and gives up and agrees with the Lower Court by stating "no" to his own sworn statement. Then the Lower Court has decided to end the hearing and rule and proves the Court has made a mistake because it cites a golf ball case where a lawyer swore he talked talked to an expert which has nothing to do with the proof the Pro se and his wife met with Knologys Manager who makes a monetary offer to pay Mr. Powells doctor bills. If there wasn't a monetary offer made, then why would the Defendant voluntarily submit the amount was in controversy, under oath? This was a genuine dispute and the Court erred.

82. Therefore Lower Court erred because Defendants response causes more disputes about the meeting and again Pro se wasn't allowed to argue his position when he should have been allowed more time for discovery so the Jason Tant email could resolve these genuine disputes because there wasn't a need for an affidavit & the Pro se's position was supported by materials in the record and were discovered while under oath. The Pro se Plaintiff still should have survived the MSJ because the formal affidavit was no longer required pursuant 28 USC 1746 & Rule 60 (b)(1)(2)(3)(4) Rule 56 (c)(1)(a), (3)(4),

(d)(1)(2)(3), (e)(1), (f)(1) & subdivision (c)(1)(b) (d)(2)(4) (e) & **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)**.

83. Pro se was never allowed to visit the Defendants 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. **Exh X, Z-1, Z-2** Pro se never received the documents about their Hartford Insurance Investigator Mr. Budkis who came to Mr. Powell's home for an interview to try to work out another settlement. See Plaintiffs Complaint p.1 & **Exh K. p. 6**, p. 8, 13, 16, 17, 18. no. 4. & Jason Tant email still hidden.

84. Pro se submits Lower Court interrupted or prodded the Pro se 15 times and this caused him be apprehensive and also be confused. Lower Court refused to hear the Pro se's arguments multiple times concerning his claim of how the lines were just illegally dropped on the ground and were eventually abandoned by Knology. **Haines v Kerner** 404~ USS 519 (1972), **Black v Lexington School Dist. (1997)** & 60 (1)(3) and if Lower Court had questioned Defendant 15 times about their supplemental production, specifically no.4, the Jason Tant email would have been submitted to the court and proved their negligence. No. 6. Endicotts office corresponding with Knology's home office about an monetary offer.

85. **Exh. R. p.14, L. 7 thru p.16. L. 5** The Pro se submits the Defendant just the unburied cable lines were theirs and the only way Defendant could answer admitted 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 their 2 lines were still connected to units A & B. Defendant tries to confuse the court with the ownership of a right of way, which was irrelevant and Pro se submits this was a genuine dispute and the Lower Court made a mistake when it granted Summary Judgment after the Defendant had already admitted verbally that the 2 lines belonged to them & this an admission of liability response to Admit 1, 2, 7, 10, 12, 15. and their admission "the only chance that they potentially could belong to Knology is this 2006 installation that our records show was performed properly."

86. Lower Court responded "I understand that but it's an issue of facts as to whether it was performed properly, isn't it?" Therefore the Lower Court erred when it granted Summary Judgment because Defendant couldn't prove their installation was performed properly because they broke the law by avoiding their required purchase of the SCDOT

encroachment permit that would have had the burial installation on record & their lines inspected for safety. The Defendant had already responded earlier to Admit 10. that they knew the 2 unburied cable lines were removed after 6-21-12 and Knology & Comcast were the only companies notified about the Pro se's injuries. Lower Court allowed the Defendant to evade answering admit and production of the Jason Tant email that would have proven their lines were removed after 6-21-12. This was a mistake and also an unanswered genuine dispute pursuant 60 (b) (1)(2)(3) 56 (e)(f) **Exh X, Y**

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 the Lower Court's mistake the Pro se was denied genuine evidence and if Pro se had been able to receive the same email from Knology representative Jason Tant **Exh L**. which should have been produced in the supplemental Production and then the MSJ would have been granted for the Pro se.

88. The Lower Court also asked the Pro se Plaintiff on **Exh R. 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?" **Exh. R., p.18**, no. 4-7. "What evidence do you have that Knology installed the cables that you tripped on?" Therefore, their motion would have been denied after Pro se submitted their new photo & the Jason Tant email.

89. The Pro se Plaintiff was in fact denied his right to acquire evidence from the Court ordered supplemental request for production & admit and the Lower Court 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 **Exh. R. p.15**, 4-17 "if you installed the cables, you're responsible. Are you not?" Therefore, this was a genuine dispute and this would have been resolved completely if the Lower Court hadn't made a mistake by allowing the Defendant to evade responding to the Lower Court's ordered supplemental request that would have revealed the hidden Jason Tant email. 60 (b)(1) & 56 (d)(1)(2)(3) & **Baughman v. American Tel. and Tel. Co. (1991)**, **Earle v. Mcveigh (1875)**, **Black v Lexington School Dist. (1997)** & **Exh X**.

90. **Exh. R. 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" Pro se submits the Lower Court erred when he granted SJ because it was obvious the Pro se had submitted a preponderance of evidence that revealed multiple genuine disputes and Judge Dennis stated he read it. **Exh X, Y**, and the following;

PRODUCTION REQUEST no. 12.

Pro se's motion for reconsideration Exh. Q
Pro se's memorandum 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

91. Pro se 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 or who, how and why their unburied lines were removed after their Manager Endicott & Operations Manager Jason Tant were contacted by Pro se.

ADMISSION REQUEST 2.

Exh K. p.11

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

92. Pro se 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, because they evaded the SCDOT Encroachment permit. Also the Lower Court submitted on **Exh R. p.14, 18. thru p.15, 17.**

"If you installed the cables, you're responsible. Are you not?"

PRODUCTION REQUEST # 8

Pro se's 2nd MSJ p. 4, **Exh. R**

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.

Pro se submits this was a genuine dispute because Knology wasn't sure they had buried the lines and the Pro se was never allowed to see the documents that included the Jason Tant email at their office or in the supplemental request.

PRODUCTION REQUEST #16

Plaintiffs motion for reconsideration Exh. U

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.

93. The Pro se submits Attorney Ben Davis submitted a fraudulent response 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 and again their new photo proved they were on the right of way after the 21st and then they removed their 2 unburied cable lines. Pro se submits this was misconduct, misrepresentation and intrinsic fraud by an Attorney to avoid responding properly with the Jason Tant email. 60 (b)(1)(2)(3) (d)(3) 56 (g) 15(c)(1)(b), **Hamilton v Miller (1991)**

PRODUCTION REQUEST no. 7.

Motion for reconsideration Exh. S

Pro se's memorandum 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.

94. Pro se submits the Defendant never supplemented because they reached a conclusion not to when they discovered that Operation Manager Jason Tant had sent Mr. Powell an email apologizing and admitting the 2 unburied cable lines belonged to the Defendant. Lower Court made a mistake when granting summary judgment when there were still multiple genuine issues because they allowed the Defendant to evade producing the ordered supplemental request.

ADMISSIONS REQUEST no. 1

Exh K, 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.

Pro se submits the Defendant just admitted the lines were theirs and they were unburied and crossing the pedestrian right of way.

ADMISSIONS REQUEST 10.

Exh. K. 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.

95. Pro se 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 A & B. Because the Defendant knew exactly when they removed them, because their Operations Manager Jason Tant was part of their decision to remove their lines from the right of way at 930 Folly Road. Again, the Lower Court made a mistake when it did not allow discovery of this email through their ordered supplemental request.

96. Defendants Memorandum in Support for SJ p.5, iv. last paragraph where it states Plaintiff hasn't identified any additional Knology installations and the reason for this is because the Defendant did not properly respond to Production #4, that would have revealed there wasn't any other installation and this fact would have been resolved immediately if the Defendant had discovered another installation by another company or after discussing this with their account at 930 Folly Road that there had been another installation to prove their argument, but this was and still is a genuine dispute. There wouldn't have been a dispute if the Jason Tant email had been properly produced.

97. Pro se 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 Pro se hadn't submitted the evidence that proved that Knology was the 100% owner was because they exercised misconduct, misrepresentation and withheld the relevant discovery from the Pro se. This was a crucial mistake by the Lower Court pursuant 60 (b)(1)(2)(3)(4) and 56 (c)(1)(a) proven by Pro se's electronically stored information of the Jason Tant email which proves 100% the 2 unburied lines belonged to Defendant, proving their argued position wasn't factual and therefore disputed. See Rule 56 (c)(1)(b) (c)(1)(2)(3)(4) (d)(1)(2)(3).

CONCLUSION

Pro se filed this motion for relief from judgment pursuant Rule 60 (b)(1)(2)(3)(4) (6) (d)(1)(3) because the order granting Defendants motion for summary judgment 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 while making mistakes before, during and after the MSJ hearing. The Defendant was allowed to exercise misconduct, misrepresentation, extrinsic fraud and the Lower Court also allowed their fraudulent response in a discovery request to stand as fact while the Lower Court allowed it's ordered supplemental discovery request to go unchallenged and unanswered before and during both MSJ hearings on 4-2-15. This continued after the Pro se had made multiple complaints during the MSJ hearing.

A claim arose out of the conduct by the Attorney and it was brought to light after the discovery of Defendants new photo and their alternative defense that was submitted

purely as an evasive and fraudulent tactic that was exercised just hours before the MSJ hearings on 4-2-15, pursuant 15 (c)(1)(b) and 60 (b)(1)(2)(3)(4). But, the Lower Court made a mistake and it was a surprise that it would allow the Defendant Attorney to evade submitting their memorandum for summary judgment to Pro se after he had discovered at the last minute he wasn't going to receive the same one the Judge had, one day before the MSJ hearing. Pro se made a complaint to the Judge during their meeting in his chambers and the Court still allowed this evasive tactic to proceed. The Pro se was denied his right to submit his argument to the Defendants new evidence which was a photo & alternative argument that was submitted in their memorandum and therefore the Pro se was denied his right to serve opposing affidavits or declarations because of Defendants bad faith tactic to deliver their memorandum. 56 (c)(h).

This was a crucial and improper ruling by the Lower Court to allow this to stand and therefore the Pro se request their new photo, **Exh. S** to be considered newly found evidence because it was discovered after the summary judgment was granted. The Lower Court's decision denied the Pro se his right to discover the Defendants new evidence before the MSJ hearing, while the Lower Court accepted and considered the evidence before it was improperly filed the next day with the Clerks Office after the motion for summary judgment hearings.

Furthermore, the Pro se didn't even know during the hearings that the Lower Court had seen the new photo and read the Defendants new alternative defense that may

have been the deciding evidence for the Lower Court to grant the Defendant summary judgment. See 60 (b)(1)(2)(3) because of the mistakes, surprise, misrepresentation, misconduct, fraud and excusable neglect by the Lower Court. Even with due diligence, this was impossible for the Pro se to discover this evidence because of the evasive responses to discovery that was allowed.

The Pro se Jack Powell had to file this lawsuit under In forma pauperis and the Pro se didn't own a computer and he had to go to the Charleston County/James Island library to type his arguments that consisted of 6 different lawsuits that originated from Mr. Powell's injuries on 6-21-12. Eventually, the Pro se discovered the Jason Tant email after the Defendant was granted motion for summary judgment and the main reason for the Pro se's oversight was he was only allowed access to their computers for 2 hours per day.

Furthermore, it was obvious the Defendants new evidence revealed genuine disputable evidence for the Pro se and their motion for summary judgment should have been denied because of their intentional tactic of evading the proper procedure of producing their ordered supplemental production request that rendered the MSJ hearing premature. **Haines v Kerner**, 404 USS 519, 1972. The Supreme Court ruled that the Court shall allow procedural time for Pro se litigants and the Lower Court didn't and the Defendant submitted evidence that wasn't clear and convincing and the Pro se was denied his right to submit their evidence proved Knology was on the right of way after 6-21-12.

Also, the Pro se should have been able to submit the same Jason Tant email as evidence during his 2nd motion for summary judgment and if needed during Defendants MSJ hearing. But the Lower Court denied the Pro se's right to receive and read proper production responses to their ordered supplemental request that was due just days before the MSJ hearings on 4-2-15. Furthermore, Pro se had demonstrated he applied all his due diligence that was available to the Informa pauperis litigant to retrieve this discovery, beginning when he first compelled their evasive discovery responses on 7-30-14.

Then Pro se submitted the Judge ordered supplemental request during the MSJ hearings and the Pro se never received the production of the Jason Tant email and the Pro se complained to the Judge in his Chambers the day before the motion for summary judgment hearings about their memorandum and also Pro se argued the next day during the two motions about the Defendant not responding properly to the Courts ordered supplemental request multiple times and at the time the Court knew it had received one and read Defendants memorandum in support for summary judgment while Pro se was denied his right to read the same copy.

Therefore, it was the Lower Court that failed in it's due diligence to protect the process of discovery and to give the Pro se litigant his constitutionality required due process and his opportunity and right to be heard. 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 non-moving 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 F.2d 590 (3d Cir. 1958), **Baughman v. American Telephone Company (1991)**, **Hamilton v Miller (1991)** **Earle v. Mcveigh (1875)** and 60 (b)(1)(2)(3)(4)(6), 56 (c)(2)(3)(4) (d)(1)(2)(3) (e)(1)

Therefore, Pro se 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. See **Handcock v Mid-South Mgmt. Co. (2009)** and **Baughmen v. American Telephone Company (1991)** and the Pro se also request this motion for Relief of Judgment to be granted because of the state, local laws & public utilities laws that were violated and the Lower Court failed to recognize these genuine disputes of Defendants duty owed to Mr. Powell while failing to allow the Pro se to set forth specific facts to reveal these genuine disputes so a trial would follow, pursuant 56 (e)(f)(g).

Jason Tant email would have had a significant impact on the outcome of this case and Defendant knew about the email and that is why they never submitted the production of documents before and during the MSJ hearing. The Lower Court abused his discretion when it allowed the Defendant to evade submitting the discovery and then grant summary judgment. The Pro se Jack Powell requests the Lower Court to allow the new evidence and grant Relief of Judgment because the email proves Knology was there after 6-21-12 to remove their 2 unburied cable lines.

Furthermore on 7-30-14 during the motions to compel, **Exh. Q.** p.5., L. 25 thru p.6., L.1-10 is where Judge Dennis stated "If they come into court and you prove that they were there and they knew it, then you impeach them using this admission." Pro submits he proved Knology owned the unburied cable lines & now the newly discovered evidence of the Jason Tant email also proves 100% that Knology was there after 6-21-12 when their 2 unburied cable lines were removed and the Pro se request the Honorable Court to impeach the Defendant by granting Relief of Judgment.

Defendants Memorandum p.5., (b) (4)

"Thus, if either of the 2 cables Plaintiff describes in his Complaint belonged to Knology, they were those installed and properly buried back on 8-22-2016." The Pro se submits the Defendant just admitted the 2 lines that the Pro se is describing belonged to them, but they weren't installed properly. Pro se attached a photo in his Complaint of Knology's 2 unburied lines that were just dropped, see above no.4 under Knology's work order. Pro se's photo was taken the day after the incident and revealed Knology's lines weren't installed, but dropped. **Exh R.,p.14., 18-25., p.15., 4-25.**

Therefore the Lower Court erred when signing the Order because it was obvious the Defendant only dropped the line and didn't bury them because they didn't know where underground lines and cables were and the Jason Tant email would have already resolved this matter.

Defendants Memorandum p.6 (C)(i)

Defendant states Plaintiff 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 adjacent property at 930 Folly Road since 12-1-2009.

This was fraud on the Court, a mistake, misconduct & misrepresentation pursuant Rule 60 (b)(1)(2)(3)(4)(6) because the Defendant knew when they made this statement that it was an untruth, because they had read all of the relevant evidence from Manager Lee Endicott who responded with a monetary offer and Knology's upper office and Pro se hadn't seen the evidence. Because the Defendant had read all of the documents about Pro se's recorded telephone conversation with Inspector James Budkis who responded with a recorded telephone call and a recorded conversation in Mr. Powell's home to work out a monetary offer and also Knology knew that they had read the emails concerning their Operations Manager Jason Tant who responded with "I am extremely sorry to hear about what happened and would like to speak with you about the incident." also responded with "I also want you to know that we immediately went out and removed the lines except for one," This was a preponderance of undiscovered evidence and some of it became available after the MSJ in the Defendants memorandum and apparently the Court failed to read the Plaintiff's Complaint p.1. at bottom. **Exh. Z-1 & Z-2**

Also Knology exercised an improper and evasive tactic with their new evidence submitted in their memorandum, that actually proved they were on the right of way after

12-1-2009 and 6-21-12.

Also this new evidence from their photo and alternative defense was overlooked as a genuine disputes by the Lower Court, even though the photo proved Knology was on the right of way after they were contacted about Mr. Powell being injured and taken by ambulance to the MUSC hospital.

This was a mistake by the Lower Court and also the Court made a mistake when the Defendant was allowed to conceal and not produce the Jason Tant Email that proved 100% Knology just negligently just dropped their 2 lines in the right of way and eventually the unsuspecting 56 year old Jack Powell was harmed on 6-21-12. See above no.8., 10., 15., 25., 26., 27., 28., 33., 34., 37., 47 – 53., 57 – 63., 66 – 68., 74 -77., 85., 86., 88 - 97. Furthermore this proved they were on the right of way after 12-1-2009 and after 6-21-12 when their abandoned dropped cable lines were removed.

FINAL NEW EVIDENCE

The last mistake was the new evidence that was stated in the Order Granting Defendants Motion for Summary Judgment on p.3., under Law para 3. "Knology argued that it had no record whatsoever of ownership or control of any of the 3 cables depicted in the photographs. Furthermore Defendant submits on p.4. para. 2, this Court recognizes that summary Judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery **Baughman v. American Tel. And Tel. Co.**, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). It is obvious the Pro se

wasn't allowed his full and fair opportunity to receive the Jason Tant email that proves the Defendant just stated an untruth. Defendant stated an untruth "no record whatsoever of ownership" and the Lower Court made a mistake when allowing Knology to not produce these records.

See p. 4., para 2 where it was stated on the 5 lines above Conclusion, where the Defendant Attorney states; "Upon further inquiry the Court determined the issues raised by the Plaintiff were either (1) originally decided in favor of Defendant during a prior discovery hearing; or (2) never raised through a proper motion. Moreover, discovery in the case progressed for more than a year, thus Plaintiff failed to demonstrate that further discovery would likely uncover additional relevant evidence as to Knology's alleged responsibility for the cables.

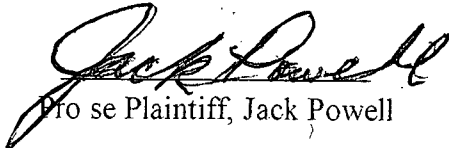
This statement proves this is new relevant evidence, because it verifies there was and still is a genuine dispute before, during and after the MSJ concerning the discovery. Because after a year Knology's records of Manager Lee Endicott, James Budkus & Jason Tant the Operations Manager weren't produced and the Lower Court engaged in a long discussion about discovery which proved this was a genuine dispute, therefore the motion was premature: **Exh R. p. 6., 7. thru p.11., 17., Exh T**, only 19 days before MSJ hearing.

Furthermore the Defendant is confused and the Lower Court made a mistake when it signed this order, because these statements proved there was still an ongoing genuine dispute because the Defendant just admitted their still not sure about how or if

the discovery dispute was resolved, because they stated "OR." So, this is still a genuine dispute because the same Lower Court failed to enforce it's own ordered supplemental request that was ordered eight months earlier and also the Court made a mistake when signing the Order that included this statement. See above no's 39. - 47. **Exh T-U, X-Y.**

Furthermore, as a Pro se litigant the Plaintiffs pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by lawyers. See **Erickson v. Pardue 551 U.S. 89, 94 (2007)** (per curiam) and the Defendant acted with means of conspiracy as well as fraud to conceal the Jason Tant email and this complaint was supported by clear and convincing evidence that the Defendant was responsible for their intentional actions to administer fraud within the procedures of discovery. Therefore, the Pro se Plaintiff Jack Powell request the Honorable Court of Common Pleas to grant Relief of Judgment.

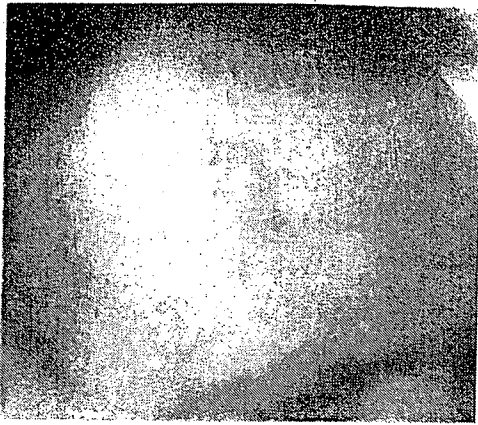
Signed & delivered on 4-3-2017


Pro se Plaintiff, Jack Powell

A.

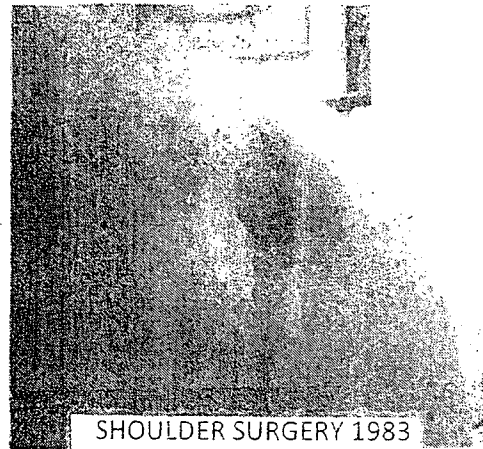


B



FOREHEAD INJURED WHEN
KNOCKED UNCONSCIOUS

C



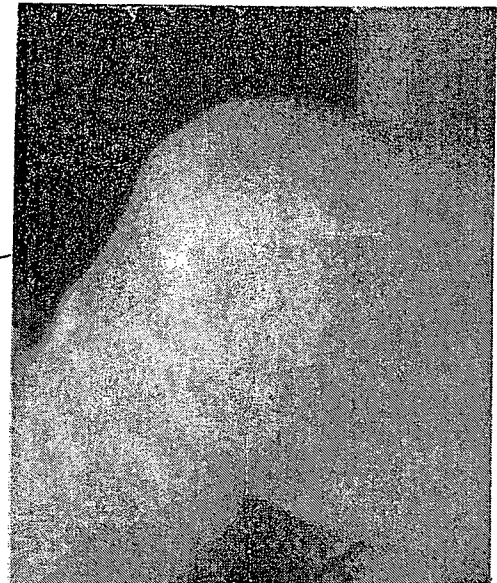
SHOULDER SURGERY 1983
ROTOR CUFF DISEASE

D



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

E



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

F



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

Medical University of South Carolina

Charleston, SC

843-792-2123

Radiology Report

6

Patient: POWELL, JACK A

MRN: 001413630

Procedure: 6717626

Date Exam Completed: 2012/06/22

Accession# 6717626

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

Date Dictated:

Radiologist 1: M, MATHEUS MD

Proxy Signer:

Radiologist 2: SHREE SUBEDI RAD

Authenticating Radiologist: M, MATHEUS GISELE RADIOLOGIST

Radiologist 3: RESIDENT

BORKO KERESHI RAD

Transcribed By: RESIDENT

Date Authenticated: 6/22/12 10:13 AM

This document should not be filed in the paper medical record and should be confidentially destroyed when it is no longer needed.

Printed by: COLLINS, VALERIE

Date Printed: 08/21/2012

Page1

Medical University of South Carolina

Charleston, SC

843-792-2123

Radiology Report

Patient: POWELL, JACK A

MRN: 001413630

Procedure: 6717627

Date Exam Completed: 2012/06/22

Accession# 6717627

Last Update: 2012/06/22

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 portion 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

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Date Printed: 08/21/2012

Page1

Medical University of South Carolina

Charleston, SC

843-792-2123

Radiology Report

Patient: POWELL, JACK A

MRN: 001413630

Procedure: 6717631

Date Exam Completed: 2012/06/22

Accession# 6717631

Last Update: 2012/06/22

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

History: PAIN

Technologist: JOHN DAVIS
RUSSELL CHAPIN MD

Date Dictated:

Radiologist 1: SHREE SUBEDI RAD
RESIDENT

Proxy Signer:

RUSSELL CHAPIN RADIOLOGIST

Radiologist 2:

Authenticating Radiologist:

6/22/12 8:38 AM

Tech IntTalk

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Printed by: COLLINS, VALERIE

Date Printed: 08/21/2012

Page1

Medical University of South Carolina
Charleston, SC
843-792-2123
Radiology Report

J

Patient: POWELL, JACK A

MRN: 001413630

Procedure: 6717632

Date Exam Completed: 2012/06/22

Accession# 6717632

Last Update: 2012/06/22

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. There are multiple bullet fragments overlies 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

This document should not be filed in the paper medical record and should be confidentially destroyed when it is no longer needed.

Printed by: COLLINS, VALERIE

Date Printed: 08/21/2012

Page1

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

Jack Powell,

vs.

Knology of Charleston Inc.

Defendant.

FILED

2015 MAR -2 PM 4:17

JULIE J. ARMSTRONG
CLERK OF COURT
BY 

K
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO.: 2013-CP-10-6019

PLAINTIFF'S INFORMAL
REQUEST TO THE COURT
FOR SECOND MOTION FOR
SUMMARY JUDGMENT

Please take notice Plaintiff, Jack Powell hereby respectfully submits this Motion for Second Summary Judgment because of new evidence and a court ordered Supplemental Request which will include conclusive evidence for Plaintiff to Informally Request the Court to reconsider it's ruling and schedule a new hearing. Plaintiff submits this Pursuant Le Francois v Goel (2005) 35 Cal. 4th 1094, 29 Cal. Rptr. 3d 249, the California Supreme Court resolved the question about reconsideration of failed motions for summary judgment Code of Civil Procedure Section 437(c)(f)(2).

Renewed motions are governed by Code Civ. Proc. 1008(b) [Deering's] [Stephen v. Enterprise Rent-A-Car (1991) 235 Cal. App. 3d 806, 816, 1Cal. Rptr. 2d 130; Graham v Hansen (1982) 128 Cal. App. 3d 965, 971, 180 Cal. Rptr. 604].

Summary Judgment was originally denied when Defendant questioned the ownership of the lines and now Plaintiff request the Court to grant another hearing because of new evidence that does in fact verify Knology's ownership of the unburied lines.

Also, Plaintiff will now submit new evidence that Knology violated crucial Charleston City Codes of Safety concerning proper and legal burial of their cable lines.

/.

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NEW EVIDENCE
EXHIBIT A, Paragraph 2
EXHIBITS B, C, D & E

1. **ADMIT #10**, where Defendant admitted they removed their cable lines, "some point and time after the alleged injury" was entered as evidence four times in Plaintiff's Motion to Compel Evasive and Incomplete Responses filed on June 10, 2014. ADMIT #10 turned out to be one of three crucial pieces of evidence missing during the MSJ hearing that verifies Knology owned the unburied cable lines connected to their customers business at 930 Folly Rd, Units A & B and therefore will be properly answered during Plaintiff's Supplemental Request or Plaintiff will request the court to charge the Defendant with Contempt, Pursuant 56 (g) Affidavits Made in Bad Faith.

EXHIBIT A, 1st PARAGRAPH

On Jan. 20th 2015 Plaintiff emailed Defendants Attorney to remind him why he called on Jan 12th 2015. Defendant's Attorney stated he would call Plaintiff back in a couple of days to set up an appointment to come by and get the Discovery Plaintiff had requested in the e-mail on Jan. 9th 2015 and also inquire why he did not send more copies of Production and Admissions.

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

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

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Plaintiff enters Knology did not deny they were contacted about the Plaintiff's injuries and also they didn't deny they owned the unburied cable lines or removed the lines that were connected to their commercial accounts. Defendant knows exactly what day and time the lines were removed and the name of the Technician who performed this stealth removal. (without notifying their commercial account at the Folly Oaks Center)

EXHIBIT F, Paragraph 1

Defendant submitted Judge Dennis wanted the Plaintiff's Compel Defendant's Production & Admissions requests on 7-30-14 (that were filed as Evasive and Incomplete Responses) to be re-served as a Supplemental Requests.

NEW EVIDENCE, NO.2

PRODUCTION #7. The individual names who actually repaired, removed or buried the "2" unburied cable lines at 930 Folly Rd. 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 documents responsive to this request, and will supplement this response upon reaching it's conclusion.

Plaintiff again submits Knology did not deny that owned or removed the cable lines. Also this Request was made about two months after the Complaint was filed and Defendant evasively did not answer. Now the Defendant has had about eight months to determine the name of the Knology technician who was ordered to drive in their company truck to 930 Folly Road to disconnect the unburied cable lines from their commercial accounts, units A

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& B. The Defendant performed a stealth disconnection while rolling up two cable lines over 100 feet each and disconnecting them from the telephone pole without any notification.

The Defendant was able to respond six months ago with the names of who were supposed to bury the lines back in 8-14-2006 and the Defendant was also able to give the technicians name that disconnected the same services to Units A & B on 6-8-2008 and 12-1-2009. BUT, Defendant states on Production #7 they "have to evaluate it's records" to determine who participated in this stealth removal. The complete and proper Response will be demanded in Plaintiff's Supplemental Admit & Production Request that was mailed on 2-20-15, which is to be properly returned within thirty days. **EXHIBITS G, H, I & J**

NEW EVIDENCE, NO. 3

PRODUCTION 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 the work done that day. **DEFENDANT'S, RESPONSE: See Response 7.**

Again the Defendant doesn't respond properly and again Knology doesn't deny the unburied cable lines belonged to them and #8 will be properly answered by 3-22-15.

NEW EVIDENCE, NO. 4

Charleston SCDOT representatives Mr. Molinaroli and Mr. Curry stated to Plaintiff that Knology did not file for a permit to bury cable lines in the right of way.

UNDERGROUND CONDUITS, CABLES AND WIRES IN PUBLIC RIGHT OF WAY
Section 30-14-148 Application; filing of plans and specifications
Charleston City Code Article V11

K

Any person duly authorized by the city council to run or lay underground conduits, ducts or pipes for electric conductors, cables or wires and desiring a permit as required in section 30-147 shall file with the department of public service an application therefore, with plans and specifications showing the location , routes and length of the proposed underground conduits, ducts or pipes. Such application shall be filed at least seventy-two (72) hours before the date scheduled for beginning of work, but in an emergency the department of public service shall waive a prior notice.

Section 30-151. Inspection of work by city: access of officials

The work of constructing any underground conduits, or laying any ducts, pipes, electrical conductors, cables wires under this article shall be subject to inspections by the department of public service, who shall have at all times free and unobstructed access to the conduits, ducts or pipes, electrical conductors, or cables for the purpose of making such inspection.

EXHIBIT K

Plaintiff was also instructed on 2-11-15 by Columbia SCDOT representative Linda McDonald to send a Freedom of Information Act to properly acquire these violations in Documented form and the FOIA request was also mailed on 2-20-15.

Also, Plaintiff had stated to Judge Jefferson during the hearing, along with multiple declarations that the Defendant did not respond to his Memorandum for Summary Judgment and also Judge Jefferson did not respond to this statement. Plaintiff submits

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Judge Jefferson may not have heard his statement and Plaintiff now submits this is a possible oversight and is a reason for the court to Reconsider it's Ruling since the Plaintiff recently had a case dismissed by Judge Dennis after he was over whelmed with 15 Motions on 7-30-14. Pro se didn't know he was supposed to Respond to MSJ and Pro se wasn't warned by the Clerks Office of this crucial procedure even after they had scheduled all of these Motions for the same day.

CONCLUSION

Plaintiff submits Defendant continues to exercise evasive tactics by returning copies of Motions that weren't even requested, while failing to properly return the crucial Discovery the Defendant's Attorney agreed to send. Defendant also tries to evade the context of why the Plaintiff originally made contact, which was to acquire the complete ADMIT #10 and copies of Admit & Production which included 7 & 8. The Defendant agreed to send these copies and later insinuate they did return Admit & Production, but did not.

EXHIBIT F, 3rd PARAGRAPH

Defendant stated; "As a courtesy, I am reattaching both of your Motions to Compel (one as to my client's responses to your Requests for Admission and the other as to my client's responses to your Request for Production)".

This statement is confusing and the Defendant did not return, send or reattach Admissions or Production. Also, Plaintiff didn't ask for copies of his Motions to Compel.

EXHIBIT I & J

K

By 3-22-15 the Plaintiff will receive the technicians name that removed Knology's unburied cable lines after they were notified of the Plaintiff's injury on 6-21-12 and documentation of the work they did that day. If the Defendant does not respond properly the Plaintiff will request the Honorable court to find the Discovery Responses admitted and Attorney charged with contempt of court Pursuant Rule 56 (g) Affidavits Made in Bad Faith.

Knology also violated state law when they negligently failed to properly file for a permitto bury the cable lines in the Right of Way. Therefore, Plaintiff submits his new evidence and also the new evidence that will be available by 3-22-15, which will be forwarded to the Court and will also be sufficient for the Honorable Court to grant the Plaintiff's Informal request for a new Hearing and granted Summary Judgment because Plaintiff has proven Knology's ownership of their unburied cable lines connected to their accounts A & B.

EXHIBIT B

1. ADMIT; your cable 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

RESPONSE: Defendant admits that it's cable line or lines were connected to the commercial building located at 930 Folly Road.

If Plaintiff is denied a new hearing, then he submits Discovery is completed and he is therefore ready for a jury trial.

Signed, Filed & Mailed on 3-2-15

Jack Savell

Exhibit K

Shannon Cerone

From: Jack Powell <carolineschair@gmail.com>
Sent: Tuesday, January 20, 2015 5:10 PM
To: Ben Davis
Subject: Re: Court hearing

① Ben I called you on Monday 1-12-15 at 4:20 p.m. and you told me you would call me back in a couple of days to set up an appointment for me to come by and get the Discovery I had requested in my e-mail on 1-9-15. It has now been eight days and also you did not send me more copies of Discovery I had asked for, along with other information I had asked for in my E-mail to be returned within ten days. I'm making this request for the last time before I contact the Clerks office about this matter. I assume 24 hours should be sufficient for you to call me and state your position on all of this .

② On Fri, Jan 9, 2015 at 12:09 PM, Jack Powell <carolineschair@gmail.com> wrote:
This is Pro se, Jack Powell and i'm contacting you about responding properly to ADMIT #14, that you initially denied but reserved the right to supplement it's response following a reasonable opportunity to conduct discovery. Ben you have had a reasonable opportunity (over five months) to conduct discovery and i expect your answers within ten days for #14 and the following; #15, All Documents about procedures and safety standards to be followed by KNOLOGY employees and contractors concerning setting up, burying, connecting, maintaining and inspecting cable lines on commercial property. You stated "Defendant will make available for inspection and copying these records to Plaintiff at the following location, after sufficiently reasonable advance notice is provided: 735 Johnnie Dodds Blvd. It's been over five months and I would like to come by next week to see these records." #16, Dates of when KNOLOGY or sub-contractors were on the property at 930 Folly Rd. from 1-1-12 to 6-25-12. and your RESPONSE: No Defendant employees visited the property between 1-12-12 and 6-21-12. Defendant reserves the right to supplement or amend this response as discovery progresses. Ben, again you have had over five months to determine when they were on the property between 6-21-12 and 6-25-12 which was also the the time in question that was requested, that you evaded. ALSO, unfortunately for me in court yesterday during my MSJ, about five months ago i had cut up your responses to Admit for preparing a Motion to Compell concerning Evasive Answers to 1, 2, 4, 7, 8, 12, 14 and i misplaced some of the Responses including your RESPONSE #10, that you admitted Knology had removed the cable lines at some point and time after the date of the alleged injury. If you don't mind i would like to get another copy of this Admissions request because i spilled coffee on mine and possibly all the Discovery Responses. I am also re-filing against the Folly Oaks Center and the Marshland Communities since in both cases they were dismissed even though i was not allowed to enter any evidence in my behalf by the same Judge who acted improper when he insulted me in court, 7-30-14. The first Doc.requested Folly Oaks is any other cable company that had service with units A & B after service was disconnected by KNOLOGY on 6-8-08 and 12-1-09 along with other evidence i failed to enter during my MSJ, this will satisfy the Judge next time of who owned the lines. Fortunately your replacement yesterday was treated fairly and I'm looking into the procedure of why my case against MUSC was awarded Summary Judgment because i did not Respond and when i did not know that i had to Respond and i told Judge Jefferson yesterday that you did not Respond and she did not even ask why you did not respond. I will send you a letter and you will receive it Monday, 1-12-15 to verify you received this E-mail that includes my notice to come by your office next week, I will also call you Monday to verify you got this E-mail. Thank you, Jack

On Tue, Jul 29, 2014 at 8:12 AM, Ben Davis <bdavis@mgclaw.com> wrote:

Mr. Powell,

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO.: 2013-CP-10- 6019

Jack Powell,

Plaintiff,

vs.

Knology of Charleston Inc.

Defendant.

PLAINTIFF'S MOTION
TO COMPEL

2014 JUN 10 PM 2:11
JULIE J. HARRIS
CLERK OF COURT

TO: KNOLOGY OF CHARLESTON INC. DEFENDANT.

Plaintiff, Pro Se; Jack Powell, hereby enters this Motion to Compel proper answers for "Request for Admissions" on the grounds the Defendant responded improperly. Plaintiff raised a number of deficiencies and evasive answers that should be considered a "Failure to Answer," Pursuant South Carolina Civil Procedure Rule 37(a)(2) and (a)(3).

DOCUMENTED "EVASIVE" ANSWERS. 1, 2, 4, 7, 8, 12, 14

The PLAINTIFF STATES; Defendants answers were EVASIVE because their information is in fact readily KNOWN & OBTAINABLE AT THE PRESENT TIME, proven by their own answers entered as Responses below;

1. ADMIT; your cable 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 its cable line or lines were connected to the commercial building located at 930 Folly Road. Defendant has made a reasonable inquiry into the reminder of the allegations set forth in Request 1, but at the present time, the information known or readily obtainable at the present stage of the discovery phase in this action is insufficient to enable either an admission or denial. Defendant therefore denies the reminder, and reserves the right to supplement this response following a reasonable opportunity to conduct discovery.

K.

1. PLAINTIFF STATES; RESPONSE #13 by Defendant, service had been "CANCELLED FOR AT LEAST "6" MONTHS".

→ RESPONSE #10, Defendant ADMITS that they "REMOVED THE CABLE LINES" at some point in time after the date of the alleged injury. Reference photo (entered with Complaint) of '2" unburied cable lines and Knology ordered their own employees or contractors to remove their unburied cable lines that were connected to the building at 930 Folly Rd. The lines were connected to a telephone pole, only about a foot from busy Folly Rd. then the lines ran for about "30" feet through the pedestrian right of way and about a "100" feet through the front yard and connected to the left side of the building.

RESPONSE#12, Defendant ADMITS they believed the lines were ORIGINALLY INSTALLED PROPERLY.

AND, Title 58, Public Utilities & Carriers, S.C. Code of LAW Section 58-12-70; NO Cable Telephone Company may INSTALL UNDERGROUND WIRES on private property WITHOUT written CONSENT of property owner. Any person VIOLATING this section shall be deemed GUILTY of a misdemeanor.

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

RESPONSE: Defendant objects to the term "supposed" in Request 2 to the extent it is ambiguous and not reasonably limited in time and scope. Subject to and without waving these objections, Defendant admits, upon information and belief, that the lines were originally installed properly, but denies any remaining allegations implied by Request 2 as worded, and reserves the right to supplement this response following a reasonable opportunity to conduct discovery.

2. PLAINTIFF STATES; Defendants response was Evasive when; SUPPOSE to bury the cable lines is ambiguous when even a lay person understands the Request. ALSO, according to the Knology guidelines, guarantees and Title 58, Public Utilities & Carriers, S.C. CODE of LAW SECTION 58-12-70 they are suppose to bury the cable lines after consent. ALSO; RESPONSE #12, Defendant ADMITS that Knology with INFORMATION and BELIEF that the lines were ORIGINALLY INSTALLED PROPERLY.

4. ADMIT; if Knology had been contacted about the "2" unburied cable lines, these lines would have been properly buried by Knology or sub-contractor.

RESPONSE: Denied. Defendant reserves the right to supplement this response once she and her counsel have had a reasonable opportunity to conduct discovery.

K

4. PLAINTIFF STATES; again using Defendants own RESPONSES TO #10, #12 and SC CODE OF LAW Title 58- Public Utilities & Carriers Section 58-12-70 evaded the proper Response.

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

RESPONSE: Denied. Defendant reserves the right to supplement this response once she and her counsel have had a reasonable opportunity to conduct discovery.

7. PLAINTIFF STATES; Defendants answer was EVASIVE & INSULTING TO CIVIL PROCEDURE when DENYING the cable lines were lying on top of the ground for at LEAST "2" MONTHS when; DEFENDANTS RESPONSE #13, ADMITS, at least one of the unburied cable lines service was cancelled for at least "6" MONTHS before the incident on 6-21-12.

→ RESPONSE #10, Defendant ADMITS they removed the cable lines after the alleged injury.

Also note: Photos entered into evidence.

8. ADMIT; that unburied cable lines running through the front yard of one of your customers and across a pedestrian right of way could be hazardous to their customers and pedestrians.

RESPONSE: Defendant has made a reasonable inquiry and the information known or readily obtainable by it at the present stage of the discovery phase in this action is insufficient to enable it to either admit or deny this request. Defendant reserves the right to supplement this response following a reasonable opportunity to conduct discovery.

8. PLAINTIFF STATES; Defendants answer was Evasive because they have the information, reports of alleged injury, photo entered into evidence with Complaint, Charleston County EMS taking Plaintiff to MUSC and their own experience as a national company whether unburied cable lines are hazardous considering their own guarantees, guidelines, safety procedures and SC CODE OF LAW Title 58-Public Utilities & Carriers Section 58-12-70. PROVEN also by;

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→ RESPONSE #10 Knology ADMITS they removed the cable lines after the alleged injury.

RESPONSE #12 Knology ADMITS BELIEF that the lines were ORIGINALLY INSTALLED PROPERLY.

ALSO, Mr. Powell was investigated by an individual in his home and was questioned by their insurance company back in 2012.

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

RESPONSE: Defendant objects to the term "supposed" in Request 12 to the extent it is ambiguous and not reasonably limited in time and scope. Subject to and without waving these objections, Defendant admits, upon information and belief, that the lines were originally installed properly, but denies any remaining allegations implied by Request 12 as worded, and reserves the right to supplement this response following a reasonable opportunity to conduct discovery.

12. PLAINTIFF STATES; enters evidence same as Request #2.

14. ADMIT; when Knology or your sub-contractor leaves a cable line "unburied" running through the front yard of one of your customers, across a pedestrian right of way, Knology is responsible if someone trips over the line and injures themselves.

RESPONSE: Defendant objects to Request 14 to the extent it is not reasonably limited in time and scope. Subject to and without waving these objections, and with the understanding that Plaintiff intends for the hypothetical scenario set forth in his request to apply to this specific case, Defendant denies Request 14, but reserves the right to supplement its response following a reasonable opportunity to conduct discovery.

→ 14. PLAINTIFF STATES; RESPONSE #10 Defendant ADMITS they removed the cable lines at some point after the alleged injury.

NOTE; Knology removed these lines because they were NOT INSTALLED PROPERLY after they were contacted about an injury/incident and stated their BELIEF the lines were INSTALLED PROPERLY. This Request is not an hypothetical scenario, reference complaint

Jack Powell
January 21, 2015
Page 2

2) Pursuant to Rule 11, SCRPC, Judge Dennis strongly encouraged you to attempt to resolve your motions with opposing counsel in advance of the July 30, 2014 hearings, and in fact, tabled your motions to allow you time to step outside the courtroom into the hallway to conduct negotiations. During our meeting in the hallway, you and I specifically discussed my client's Response to Request for Production No 15. I objected to the Request on the grounds that it was overly broad, and after you and I had the chance to discuss, you ultimately agreed. During the hearing that followed, we placed this agreement on the record with Judge Dennis, who agreed that the appropriate next step would be for you to prepare more narrowly tailored requests and serve them as Supplemental Requests for Production. To date, you've not served the Supplemental Requests for Production. Once you do, I will of course be happy to take steps to gather the appropriate documents in response. Until that point, we will not have the appropriate documents available for review here at my office.

3) My client's Response to your Request for Production No. 16 was deemed appropriate, and it remains our position. To date, I have not discovered any new information that would lead me to amend or supplement this response.

Additionally, I understand from your email that you have misplaced, damaged, or otherwise lost some of the contents of your file. As a courtesy, I am reattaching both of your Motions to Compel (one as to my client's responses to your Requests for Admission and the other as to my client's responses to your Requests for Production).

In conclusion, both of the attached Motions were heard and resolved by Judge Dennis on July 30, 2014. According to your email, you are now re-raising some of the very same issues, and moreover, you are threatening to file additional Motions should I not comply with your demands. I hope this correspondence will now conclusively resolve these issues for you. I have now on two separate occasions been forced to dedicate significant time to addressing these issues, and given that the Court has already resolved them, I feel that is far more than adequate.

I look forward to working with you as the case moves forward, but I cannot continue to revisit these same issues. Should you proceed with refiling your motions, I will be forced to seek appropriate recourse in response.

Very truly yours,



Benjamin B. Davis

BBD/src
Enclosures

13

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON.

K

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A No.: 2013-CP-10-6019

JACK POWELL,

PLAINTIFF,

vs.

SUPPLEMENTAL
REQUEST FOR
PRODUCTION

KNOLOGY OF CHARLESTON INC,

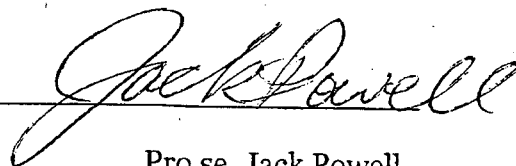
DEFENDANT,

TO: DEFENDANT, KNOLOGY OF CHARLESTON INC.

Pro Se Plaintiff, Jack Powell hereby propounds the following Supplemental Request for Production upon Defendant pursuant Rule 34 of the South Carolina Rules of Civil Procedure. The matters set forth below should be properly returned within thirty (30) days after the service hereof.

Plaintiff therefore propounds upon Defendant pursuant to the South Carolina Rules of Civil Procedure, Rule 36. Matters set forth below will be considered admitted unless the Defendant furnishes a response to the contrary within thirty (30) days after service hereof. Plaintiff will apply to the Court for an order requiring the Defendant to pay the Plaintiff reasonable expenses incurred in that proof, including reasonable attorney fees.

Dated & Mailed on 2-20-15


Pro se, Jack Powell

K

PRODUCTION REQUEST

4. All documents of Mr. Powell's taped conversations, letters or correspondence of any kind with Knology, anyone, including your insurance companies.
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. The individuals names who actually repaired, removed or buried the "2" unburied cable lines at 930 Folly Rd. on or after 6-21-12.

DEFENDANT'S FIRST RESPONSE

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

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

RESPONSE: See Response 7.

11. Documents stating dates when Knology or sub-contractor came to the property at 930 Folly Rd to bury, repair or remove the "2" unburied cable lines after 6-21-12.
15. All documents about procedures and safety standards to be followed by Knology employees and contractors concerning setting up, burying, connecting, maintaining and inspecting cable lines on commercial property.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A No.: 2013-CP-10-6019

JACK POWELL,

Plaintiff,

vs.

SUPPLEMENTAL REQUESTS
FOR ADMIT

KNOLOGY OF CHARLESTON INC.,

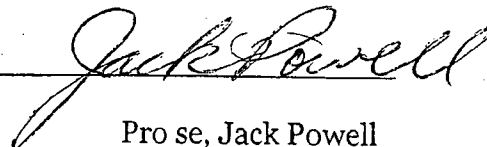
Defendant,

TO; KNOLOGY OF CHARLESTON INC., DEFENDANT

Plaintiff Pro Se; Jack Powell hereby propounds the following Request for Supplemental Responses to Admit upon Defendant that Judge Dennis ordered during Plaintiff's Compel hearing for Evasive and Incomplete on July 30, 2014. Plaintiff submits the Defendant has had more than sufficient time to respond properly.

Plaintiff therefore propounds upon Defendant pursuant to the South Carolina Rules of Civil Procedure, Rule 36. Matters set forth below will be considered admitted unless the Defendant furnishes a response to the contrary within thirty (30) days after service hereof. Plaintiff will apply to the Court for an order requiring the Defendant to pay the Plaintiff reasonable expenses incurred in that proof, including reasonable attorney fees.

Dated & Mailed on 2-20-15


Pro se, Jack Powell

16.

K

ADMISSIONS REQUEST

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.
2. ADMIT; these "2" unburied cable lines were supposed to be buried.
7. ADMIT; that at least one of these unburied cable lines was lying on top of the ground for at least "2" months.
10. ADMIT; after Knology or sub-contractor was notified about the trip and fall injury of Mr. Powell, the cable lines were removed.

Defendant's First Response

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

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

RESPONSE: Defendant objects to the term "supposed" in Request 12 to the extent that it is ambiguous and not reasonably limited in time and scope. Subject to and without waving these objections, Defendant admits, upon information and belief, that the lines were originally installed properly, but denies any remaining allegations implied by Request 12 as worded, and reserves the right to supplement this response following a reasonable opportunity to conduct discovery.

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

K

FREEDOM OF INFORMATION ACT

2-20-15

I Jack Powell request with the Freedom of Information Act the South Carolina Department of Transportation to return the following within 30 days, because of a priority matter concerning a civil matter.

According to Knology's work order for 8-14-06 and from Discovery they connected services to units A & B at 930 Folly Road and then crossed the right of way with their two lines and connected them to a telephone pole. Jack Powell was told by SCDOT representatives that Knology did not acquire the proper permits for this action.

FOIA REQUEST; I need a copy of the permits that were acquired by Knology or a statement from the SCDOT that Knology did not acquire permits and what state, county and/or city laws or ordinances that were violated by their failure to comply.

Your office will be e-mailed and/or called on Monday the 23rd to verify the delivery of this request and this information should be sent to the following address; Thank you, Jack

1402 Camp Rd. Unit 8-A
Charleston S.C. 29412

(843)952-4762

Dated & Mailed on 2-20-15





Jack Powell <carolineschair@gmail.com>

Exposed wire

5 messages

Jason Tant <Jason.Tant@knology.com>

Thu, Jun 28, 2012 at 10:10 AM

To: "carolineschair@gmail.com" <carolineschair@gmail.com>

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 803-857-1493), 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

Jason Tant

Orion Building Services LLC

Greater Atlanta Area | Facilities Services

208
connections

Current Orion Building Services

Previous WOW! Internet, Cable & Phone, Knology, Comcast Communications

Education Comcast Learning & Development

View Jason's full profile. It's free!

Your colleagues, classmates, and 400 million other professionals are on LinkedIn.

[View Jason's Full Profile](#)

Experience

Owner

Orion Building Services

May 2014 – Present (2 years 9 months)

We provide general repair and maintenance services to commercial and retail building owners and property managers.

Broadband Network Manager

WOW! Internet, Cable & Phone

September 2012 – April 2014 (1 year 8 months)

**Operations Manager**

Knology

November 2011 – April 2014 (2 years 6 months)



- Responsible for day to day operations of all residential and business service and installation for the Charleston Division as well as all Warehouse operations.

Engineering Operations Manager

Comcast Communications

January 2000 – November 2010 (10 years 11 months)

- Responsible for all 58 of the Atlanta Regions hub sites as well as 7 head ends with seventeen head end technicians as direct reports
- Built the hub department from the ground up, implementing all of the current processes and procedures as well as securing tools and supplies as this was a new department developed by the Regional management team that was previously managed by the local systems individually
- Organized a region wide node optimization where we optimized the hub to node fiber links on over 4,000 nodes in our region as well as sweeping the first actives off every node with a team of two Headend technicians and about eight Maintenance technicians working nights to prevent any customer impact.
- Worked with the local systems maintenance departments to implement good practices for return troubleshooting to improve our customer's experiences by developing engineering guidelines for proper return signal from the node to the CMTS.
- Involved with testing and implementing many new products, like Pathtrak, Stealth Sweep units, Edge Quams, NSG's, Transmitters, Receivers, combining equipment, and Fiber Nodes to name a few.

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Search for people, jobs, companies, and more...



Advanced



Is Your Company Listed? - List your Furniture Store Online. Enter business address to start now. [Read More »](#)

People Similar to Kayla



Kayla Droney

2nd

Corporate Field Marketing Coordinator at WOW!
Internet, Cable & Phone

Charleston, South Carolina Area | Public Relations and Communications

Current WOW! Internet, Cable & Phone
Previous Knology, Charleston Habitat for Humanity, La Creuset
Education Radford University

Connect

Send Kayla InMail

500+
connections

<https://www.linkedin.com/in/kayladroney>



Contact Info

Background



Summary

Over ten years of experience in:

- Budget Management
- Marketing Strategy
- Internal Communication
- Customer Retention
- Project Management
- Team Leadership/Participation
- Public Relations Management
- Volunteer Recruitment and Retention



Experience

Kayla Droney | LinkedIn

marketing budget variances during monthly P & L calls

- Collaborated with corporate marketing team to increase cross channel and online advertising in competitive areas
- Schedule and lead meetings for retention marketing campaigns that included outlining scope documents, message strategy, action items, assigned responsibility and timing of campaign
- Effectively communicate project details including new products, pricing, rate increase and channel lineup changes to management and front line teams
- Responsible for sales training for front line team members, create local sales contests for technicians and customers service representatives
- Responsible for internal communication; travel 40% between systems
- Managed warehouse re-organization to improve efficiency of procedures in the Charleston system in preparation of digital conversion, outlined timeline, hired temps and led warehouse to complete project on time
- Responsibilities above are in addition to responsibilities as Area Marketing Coordinator for Augusta, GA & Charleston, SC

Area Marketing Coordinator- Charleston, SC & Augusta, GA

WOW! Internet, Cable & Phone

October 2012 – Present (4 years 4 months)



- Managed the branding of WOW! materials during the transition from Knology to WOW!
- Plan and execute local marketing strategy to achieve budgeted customer growth; track all marketing tactics including cost per call and cost per subscriber
- Manage marketing budget; responsible for explanation of marketing budget during P & L calls
- Maintain stock of marketing collateral
- Deliver messaging of any product, pricing, rate increases, channel changes and sales training; created local sales contest for front line employees
- Responsible for internal communication; travel 25% between systems

Original Message

Message ID	<CAKd+2huVcL7TNT5hgV06pohVWxzHcaCX0RXLGj9W9tSLk_6nQw@mail.gmail.com>
Created at:	Tue, Sep 4, 2012 at 12:08 PM (Delivered after 0 seconds)
From:	Jack Powell <carolineschair@gmail.com>
To:	Jason Tant <Jason.Tant@knology.com>
Subject:	Re: Exposed wire

[Download Original](#)[Copy to clipboard](#)

MIME-Version: 1.0
Received: by 10.231.186.219 with HTTP; Tue, 4 Sep 2012 09:08:59 -0700 (PDT)
In-Reply-To: <28474099AE2D8B4EA910BFCB797994957DDA645A@EXCH1.knology.com>
References: <28474099AE2D8B4EA910BFCB797994957DDA645A@EXCH1.knology.com>
Date: Tue, 4 Sep 2012 12:08:59 -0400
Delivered-To: carolineschair@gmail.com
Message-ID: <CAKd+2huVcL7TNT5hgV06pohVWzzHcaCX0RXLGj9W9tSLk_6nQw@mail.gmail.com>
Subject: Re: Exposed wire
From: Jack Powell <carolineschair@gmail.com>
To: Jason Tant <Jason.Tant@knology.com>
Content-Type: multipart/alternative;
boundary=00032555751ad7f41704c8e27948

--00032555751ad7f41704c8e27948
Content-Type: text/plain; charset=ISO-8859-1

I'll be needing the name of your sub-contractor who left the lines exposed for months since i will be filing a suit against them also !!!
Jack Powell

--00032555751ad7f41704c8e27948
Content-Type: text/html; charset=ISO-8859-1
Content-Transfer-Encoding: quoted-printable

I'll be needing the name of your sub-contractor who left the lines expo=

Charleston County Public Library - Computer Use Policy

Do I need to have a CCPL library card in order to use a computer?

If you are a Charleston County resident, you are encouraged to obtain a library card, which you will use to sign-in to the library's automated computer reservation system. Non-residents may request an Internet-only card. Internet-only cards allow computer use, but cannot be used to check out materials. Library cards and Internet-only cards are available free of charge. Daily guest passes for computer use may be available for visitors, as well.

Do I need a special kind of library card in order to use the Internet at CCPL?

If you would like to use the Internet at CCPL, you will need to sign the library's Internet Acceptable Use policy available at the Circulation Desk. The agreement states that you will not view pornographic or obscene images while using the library's computers and you will not tamper with computer equipment. You must be at least 18 years old to sign the agreement, or a guardian can sign for you. Once signed, Internet privileges will be added to your library card or Internet-only card.

Will I need to show identification in order to use a computer at CCPL?

Your library card or Internet-only card will serve as your identification for all Microsoft Office and Internet-accessible computers. If you have forgotten your card, just present your photo identification and a staff member will happily retrieve your card number for you. Photo identification will be required to receive a guest pass for computer use, as well. Library card fines do not impact computer use.

Do I have to reserve a computer in advance?

Some days you may be able to enter the library and use a computer right away. The computer will show if it is available or if there is a reservation pending. If you want to ensure the use of a computer, you may make a reservation for a later time, or for the next day, at reservation stations throughout the library. You may only use your library card or Internet-only card to reserve a computer. You may have one reservation at a time, either active or pending. If you do not show up for a reservation, it will count as one of your sessions. Telephone and online reservations are not available at this time.

Are there time limits for computer usage at CCPL?

You may have two sessions per day on reservation-regulated computers. A session ranges from 1 to 60 minutes, depending on availability. The maximum amount of time you may have on these computers is two hours per day. You may not use another person's card in order to reserve additional time. Attempts to circumvent the reservation software, or the use of other library cards to gain additional computer time, may result in the loss of your computer privileges.

May I share a computer with a friend?

If space is available, two patrons may share a computer. Younger patrons may be asked to show their library cards in order to verify that their guardians have allowed Internet privileges.

Can I print from the computers at CCPL?

The library has a print management system that is connected to all of the computers in the library. Black and white prints are 10¢ each and color prints are 25¢ each. You can send multiple print jobs to the print queue and then pay for and retrieve your jobs all at once. Unprinted jobs will be deleted at closing each day.

How can I save my files?

All computers at CCPL have floppy disk drives and many allow you to save files to a USB storage device. Floppy disks can be purchased for 50¢ each and flash drives can be purchased for \$5 each. You may also save your files to the computer's Desktop temporarily in order to e-mail them. The library cannot be responsible for loss of data due to equipment malfunctions or damaged storage devices.

May I plug my personal headphones, cell phone, digital camera, or MP3 player into a library computer?

Where visible ports are available, you may plug your personal devices into library computers. The library, however, is not responsible for any damage that may occur to your devices and you are asked not to tamper with the computer's hardware or settings. For your safety, please do not shut down or unplug computers without staff present. Please note that some library computers do not have sound. Headphones are available for purchase for \$2.50 each.

May I bring my own computer to the library?

CCPL is pleased to offer several laptop-friendly areas where electrical outlets are accessible. Some library locations also provide a free wireless signal. There are no printing capabilities for non-library computers. Patrons are asked not to disconnect library equipment or connect their personal computers to library equipment. If you need to recharge your device, please connect to electrical outlets in designated areas only. When using your personal computer, follow library policy and only display images appropriate for a public setting.

Is computer help available?

Library staff is glad to provide basic computer assistance. If you need more help you are encouraged to sign up for one of the many instructional classes offered. For details, please ask staff for a schedule or visit our web site (www.ccpl.org) and click on Program and Events.

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON 2013-CP-10-6019
3

4 JACK POWELL) TRANSCRIPT OF RECORD
5 VS.)
6)
7 KNOLOGY OF CHARLESTON, INC.) JULY 30, 2014
CHARLESTON, SC

8
9 B E F O R E:

10 HONORABLE R. MARKLEY DENNIS, JR.

11
12 A P P E A R A N C E S:

13 JACK POWELL
Appearing Pro Se

14 BENJAMIN DAVIS, ESQUIRE
Attorney for Knology

15
16 Ruth L. Mott, RPR, CRR
Certified Court Reporter
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1 THE COURT: All right. According to the listing, Mr.
2 Jones, not to bump you back, but Mr. Davis is actually listed
3 ahead of you on this matter so -- and thank you, Mr. Powell,
4 as well as Mr. Davis, for allowing me to go through the
5 docket and get that resolved because I knew these were going
6 to take a little bit longer.

7 MR. DAVIS: Certainly, Your Honor.

8 THE COURT: But I appreciate your patience with the
9 Court. Okay. Let me get the file first.

10 MR. DAVIS: Your Honor, if I may, I don't want to
11 interrupt you while you're reading, but maybe to cut out half
12 of your work, Mr. Powell and I did reach an agreement as to
13 his motion to compel, request for production. He has agreed
14 to submit some revised requests for production as to a couple
15 of his requests and make them a little more specific.

16 THE COURT: All right. So why don't we just say this,
17 the present motion to compel is withdrawn without prejudice,
18 and then you can submit another one, Mr. Powell.

19 MR. POWELL: Okay.

20 THE COURT: Okay?

21 MR. POWELL: Yes, sir.

22 THE COURT: That way that takes that off the table.
23 What's the next motion?

24 MR. DAVIS: Your Honor, may it please the Court, I
25 believe that what's left now, at least in the Knology case,

1 is Mr. Powell's motion for -- motion to amend with regards to
2 the requests for admission we responded with.

3 THE COURT: Is it similar to what you answered, denying,
4 basically asserting that --

5 MR. DAVIS: Yes, Your Honor, and so he filed a motion to
6 compel, calling a number of the answers evasive, and so I
7 assume he's asked for a more definitive answer on that.

8 THE COURT: Which ones do you take issue with? I have
9 that before me.

10 MR. POWELL: Okay. On No. 1, where I asked him to admit
11 the cable lines were connected to the commercial building and
12 running through the front yard, up across the pedestrian
13 runway.

14 THE COURT: Yes.

15 MR. POWELL: Of course they admit that the lines were
16 connected to the building, but they deny that they have
17 insufficient, I guess information, to answer whether it was
18 running through the front yard.

19 THE COURT: Front yard of who?

20 MR. POWELL: Of the property at 930 Folly Road.

21 THE COURT: Is it running through -- the property that
22 you're talking about, is that property they own or someone
23 else owns?

24 MR. POWELL: No, it's their account. It's someone
25 else's. I've got pictures of it.

1 THE COURT: So it's not their property.

2 MR. POWELL: Right. It's one of their accounts.

3 THE COURT: I'm not going to require them to be any more
4 specific than that. They don't know.

5 MR. POWELL: Well, actually, they do.

6 THE COURT: No, they don't. Mr. Powell, as I told you,
7 one of the things you have to understand, there's a world of
8 difference between a request to admit and what you're doing
9 from your knowledge and then testimony in a deposition. You
10 can take their depositions. You can ask them any questions
11 you want. You can ask them, how did the line get there; did
12 they service the lines. But right now that's a sufficient
13 answer, and you're entitled to explore that if it becomes
14 necessary, should you choose to, by taking depositions. But
15 that's another matter. That doesn't have anything to do with
16 requests to admit, so that one I would deem to be a
17 sufficient answer. What's the next one?

18 MR. POWELL: If Knology had been contacted about the two
19 unburied cable lines, these lines would have been properly
20 buried by Knology or subcontractor, and they denied.

21 THE COURT: That's not a question. That's a statement
22 that you're making that you're asking them to agree to.
23 They're not required to do that.

24 MR. POWELL: I said if they had been contacted.

25 THE COURT: What's your position there, Mr. Davis?

1 THE COURT: I would expect you to.

2 ~~Court~~ ~~Mr. Powell~~, these are just -- their answers, based on
3 the phraseology and based on what you're submitting, are the
4 reasonable response to your submissions, so I find those
5 would be reasonable.

6 MR. POWELL: Your Honor, No. 12 is concerning local
7 laws.

8 THE COURT: They're not required to make statements of
9 law, sir. They don't have to agree what local laws are.
10 That's the Court's position. What they say about it doesn't
11 have a thing in the world to do with it. Just like the
12 cable. If they said it's not hazardous, that's what we will
13 determine. That's what the lawsuit is.

14 MR. POWELL: Yes, sir.

15 THE COURT: Whether they think it's hazardous or not is
16 really not that significant, okay?

17 MR. POWELL: Yes, sir.

18 THE COURT: All right. So what else?

19 MR. POWELL: When Knology or subcontractor leaves a
20 cable line unburied running through the front yard of one of
21 your customers across pedestrian right-of-way, Knology is
22 responsible.

23 THE COURT: That's a statement by you. That's not a
24 question. Their response is appropriate, whatever it is.
25 That's just an improper statement. It's just you making an

1 argument.

2 MR. POWELL: It's the same thing in my complaint.

3 THE COURT: Sir, I hate to tell you this, but you really
4 and truly are going to have a lot of problems when you try
5 this case because that's totally improper, so thank you, sir.
6 You can say that to your jury. You can argue that, but it's
7 based on proof, not what they say, okay? And they don't have
8 to admit that. They don't have to admit that they hurt you.
9 They may have. They don't have to admit that. You prove it,
10 okay? That's what lawsuits are about. That's what it's all
11 about.

12 I practiced law for 21 years, and I had more clients
13 come in, and they got so bent out of shape about the
14 pleadings. How could they say that? And I said, wait until
15 you see yours, and wait until they see that because it's the
16 complete opposite. They're called football -- I call them
17 the sidelines of a football field. One pleading on this
18 side, one pleading on that; the ball game's played in
19 between, and that's exactly -- all it does is frame the
20 issues. You have to prove your case.

21 Thank you, sir. Okay. What other motion do we have in
22 Knology?

23 MR. DAVIS: Your Honor, Knology does not have any
24 motions.

25 THE COURT: Any others that we haven't addressed?

1 MR. DAVIS: I believe there were only two with regards
2 to the Knology case.

3 THE COURT: Thank you, sir. All right. Now Mr. Jones
4 is back.

5 MR. DAVIS: Thank you, Your Honor.

6 --- END OF TRANSCRIPT OF RECORD ---
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1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF CHARLESTON

4
5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 9th Judicial Circuit Court for Charleston County,
11 South Carolina, on the 30th of July, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 July 11, 2016

16
17 Ruth L. Mott, RPR, CRR

18 Certified Court Reporter
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25

R

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

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

3 MR. DAVIS: Your Honor.

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

7 MR. POWELL: (Affirmative nod).

8 THE COURT: And you're represent-
9 ing yourself?

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

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

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

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

19 MR. DAVIS: Yes, Your Honor.

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

24 MR. POWELL: Which one are we
25 talking about?

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

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

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

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

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

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

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

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

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

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

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

25 THE COURT: Okay.

R

1 MR. POWELL: Your Honor, ---

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

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

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

11 MR. POWELL: He's ---

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

16 MR. POWELL: Okay.

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

20 MR. POWELL: Yes, sir.

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

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

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

7 Now, what other issue do you have?

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

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

21 MR. POWELL: May I?

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

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

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

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

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

13 MR. POWELL: I have.

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

16 MR. POWELL: Before July 30th.

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

22 MR. POWELL: There was a ruling.

23 THE COURT: Then it's been ruled
24 on.

25 MR. POWELL: But the production

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

5 THE COURT: And have you filed any
6 additional requests?

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

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

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

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

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

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

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

11 MR. POWELL: Yes, sir.

12 THE COURT: If you would, pass it
13 up.

14 MR. POWELL: That I sent him.

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

18 MR. POWELL: (Tenders), ---

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

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

25 THE COURT: Just ---

1 MR. POWELL: Yes, sir.

2 THE COURT: Dated and mailed
3 2/20/15. That means in February of this
4 year, correct?

5 MR. POWELL: Right.

6 THE COURT: Correct?

7 MR. POWELL: Right.

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

16 MR. POWELL: Okay.

17 THE COURT: Okay?

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

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

1 to. But that's not before me today.

2 MR. POWELL: I ---

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

5 MR. POWELL: Okay.

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

8 MR. POWELL: Okay.

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

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

16 MR. POWELL: Okay.

17 THE COURT: Thank you.

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

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

22 THE COURT: Sure.

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

25 THE COURT: You did and your

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

7 MR. DAVIS: Thank you.

8 THE COURT: Yes, sir.

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

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

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

21 THE COURT: I am.

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

1 incident occurred on Knology's land.

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

5 MR. DAVIS: Yes, Your Honor.

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

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

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

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

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

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

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

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

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

20 MR. DAVIS: There is no evidence
21 that Knology -- that these cables were placed
22 there by Knology. The only chance that they
23 potentially could belong to Knology is this
24 2006 installation that our records show was
25 performed properly.

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

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

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

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

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

5 MR. DAVIS: No, Your Honor.

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

11 MR. POWELL: Well, ---

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

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

18 THE COURT: Listen. I appreciate
19 all of that.

20 MR. POWELL: Okay.

21 THE COURT: I'm asking you, what
22 question -- I assume that is dated back in
23 2006?

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

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

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

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

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

12 THE COURT: Well, I appreciate
13 that.

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

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

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

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

4 MR. POWELL: Okay.

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

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

13 THE COURT: That day being in
14 2006?

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

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

20 MR. POWELL: The whole front yard.
21 It's like a hundred feet where they run it,
22 930 Folly Road.

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

25 MR. POWELL: No, but that's the

1 reason they didn't bury the lines.

2 THE COURT: All right.

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

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

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

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

21 THE COURT: Removed the lines?

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

24 THE COURT: When did they remove
25 the lines?

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

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

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

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

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

12 THE COURT: Well, until ---

13 MR. POWELL: It's in my Complaint.

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

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

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

1 THE COURT: Okay.

2 MR. POWELL: But, see, now Mr.

3 Davis was telling me yesterday that Lee
4 Endicott doesn't work there anymore and he's
5 never returned the documents in production of
6 what this man did and why he offered me the
7 money and who he said -- I still haven't
8 received the production.

9 THE COURT: Okay. Anything else?

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

13 THE COURT: Okay.

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

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

19 MR. POWELL: Sir?

20 THE COURT: Anything else?

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

25 THE COURT: Well, I -- sorry about

1 that.

2 MR. POWELL: I ---

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

12 MR. POWELL: (No verbal response).

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

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

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

20 MR. POWELL: A sworn statement?

21 THE COURT: Yes, sir.

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

24 THE COURT: Yes.

25 MR. POWELL: No, there's not a

1 sworn statement.

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

15 MR. POWELL: I ---

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

19 MR. POWELL: Okay.

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

23 MR. DAVIS: Thank you, Your Honor.

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

1 Mr. Powell, and take it to the Supreme Court.

2 Maybe they will help you out up there.

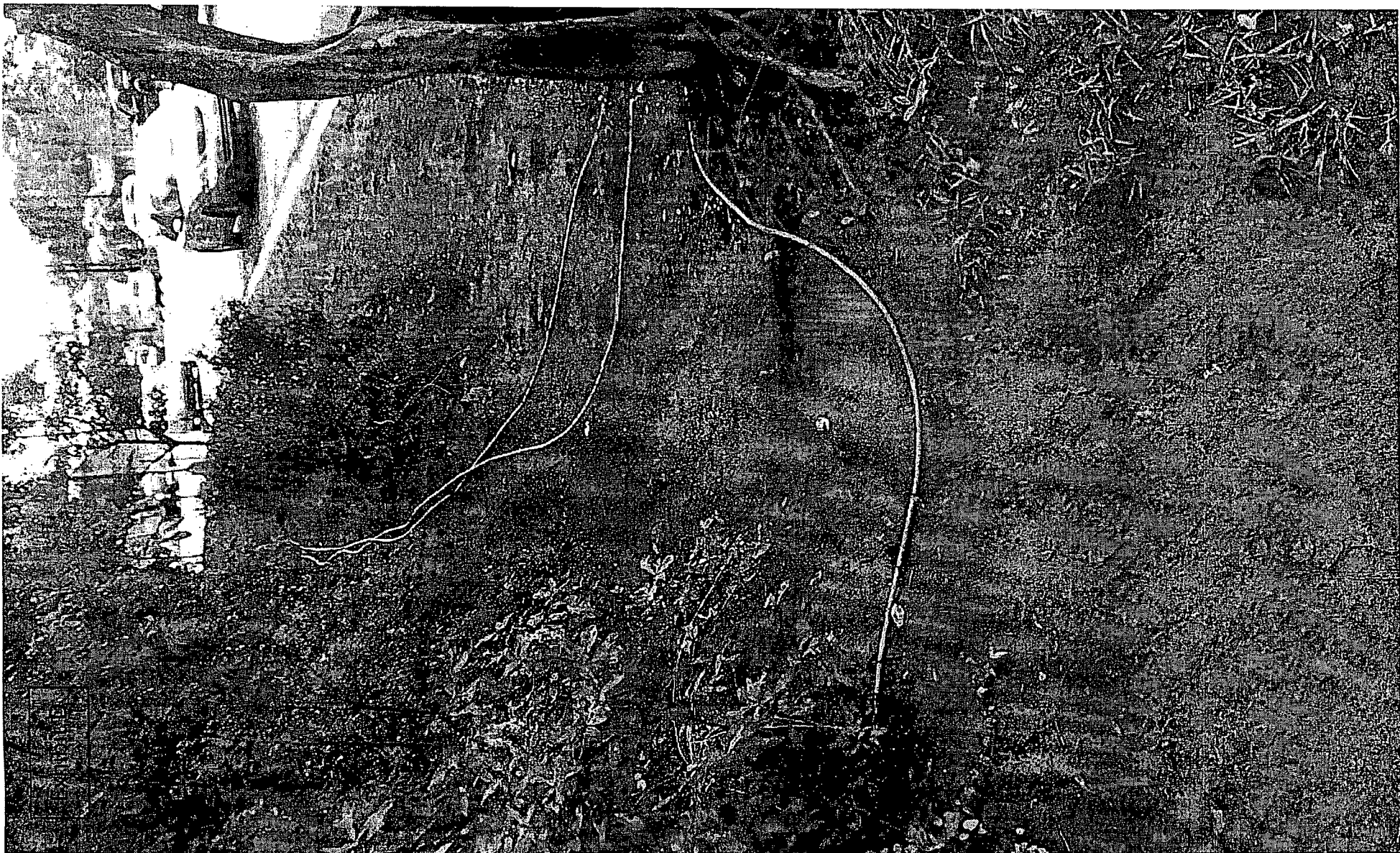
3 If you (Mr. Davis) will prepare the
4 Order.

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

7 (HEARING CONCLUDED)

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5





Jack Powell <carolineschair@gmail.com>

Jack Powell v Knology; Chas CP Jury Roster 2013-6019

1 message

Ben Davis <bdavis@mgclaw.com>

Fri, Mar 13, 2015 at 4:03 PM

To: "Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey)" <MDennisLC@sccourts.org>

Cc: "Caroline Crisler. Leonard" <cclleonard@charlestoncounty.org>, "Jack Powell (carolineschair@gmail.com)" <carolineschair@gmail.com>

Good afternoon, Lindsey,

I represent the Defendant in the above case, and have cc'd pro-se Plaintiff, Jack Powell. The case appeared on the short list for next week's jury term in Charleston County, and was called at this morning's roster meeting. I had hoped to be able to confer with Mr. Powell in person to discuss a potential consent scheduling order, but Mr. Powell did not attend in person or appear electronically. As a result, the case was added to the roster in the #8 position, but only in anticipation that Caroline or I would hear back from Mr. Powell this afternoon.

Mr. Powell has yet to reply to Caroline's email, so I am unable to speak on his behalf about his readiness for trial. In hopes of obtaining some finality for planning purposes before heading into the weekend, I felt it best to go ahead and express my desire that the case be continued for another 45-60 days. I believe that time would allow us to tie up some loose ends on some outstanding discovery issues, and perhaps would allow time for recently-filed motions to be heard and decided which, depending on the outcome, may preclude the need for trial.

Recognizing again that I am unable to comment on whether or not Mr. Powell would be willing to consent to this request, I am hoping Judge Dennis may be able to provide us with some direction.

Thanks very much,

Ben Davis

**Ben Davis, Attorney**

bdavis@mgclaw.com

735 Johnnie Dodds Blvd. Ste 200

Mt. Pleasant, SC 29464

Main: 843-576-2900 | Direct: 843-576-2920 | Fax: 843-534-0605

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Jack Powell <carolineschair@gmail.com>

Discovery

2 messages

Jack Powell <carolineschair@gmail.com>
To: bdavis@mgclaw.com

Thu, Sep 18, 2014 at 3:22 PM

This is Jack Powell, what happened to the Discovery you were going to send me that we discussed at court on 7-30-14?

Ben Davis <bdavis@mgclaw.com>
To: Jack Powell <carolineschair@gmail.com>

Thu, Sep 18, 2014 at 3:43 PM

Mr. Powell,

If you will recall, I served you with our responses via hand delivery before the motions hearings. I believe there was some discussion about certain business records you were interested in. The final conclusion was that you planned to prepare and serve amended/supplemental requests for production identifying the records you were interested in obtaining with more specificity. Since that time, I've not received any amended/supplemental requests from you. I can tell you that we have supplemented our discovery responses to you with additional records we have obtained (once on 8/15 and again on 9/3).

Ben Davis

From: Jack Powell [mailto:carolineschair@gmail.com]
Sent: Thursday, September 18, 2014 3:22 PM
To: Ben Davis
Subject: Discovery

This is Jack Powell, what happened to the Discovery you were going to send me that we discussed at court on 7-30-14?



1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON 2013-CP-10-5351
3

4 JACK POWELL) TRANSCRIPT OF RECORD
5 VS.)
6)
7 MEDICAL UNIVERSITY OF SOUTH) JULY 30, 2014
CAROLINA) CHARLESTON, SC
8

9
10 B E F O R E:

11 HONORABLE R. MARKLEY DENNIS, JR.

12 A P P E A R A N C E S:

13 JACK POWELL
14 Appearing Pro Se

15 JAY JONES, ESQUIRE
Attorney for Defendant Medical
16 University of South Carolina

17 Ruth L. Mott, RPR, CRR
18 Certified Court Reporter
19
20
21
22
23
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1 false arrest, imprisonment, and assault and battery. I'll
2 just briefly address each cause of action and then --

3 THE COURT: You filed a memorandum.

4 MR. JONES: I did, and I don't want to rehash it.

5 THE COURT: You certainly are entitled to rely on the
6 positions stated fully. I'm incorporating it for purposes of
7 review should that become necessary.

8 MR. JONES: I appreciate that, Your Honor. Very
9 briefly, the negligence and gross negligence, the basis of
10 that is essentially that the medical staff and the staff at
11 MUSC didn't properly discharge him. There were some issues
12 with whether or not he should have been discharged with pain
13 medication pending. Those are all questions of medical
14 negligence. There's been no expert affidavit. There's been
15 no evidence establishing the standard of care or any
16 deviation therefrom. Slander and libel, Mr. Powell alleges
17 that the statements actually by the MUSC staff contained in
18 the medical records are slanderous and libelous for I believe
19 saying that he -- bear with me one moment, that he was
20 verbally abusive and that he was quote, unquote, poorly
21 groomed. However, in his deposition Mr. Powell admitted to
22 all of this. As you know, truth is a complete defense to
23 defamation.

24 Moreover, these statements would be qualifiedly
25 privileged because they're in medical records. They weren't

1 myself, but I did win an appeal from Columbia to try that
2 again. And, of course, he had mentioned there's no evidence
3 of offensive touching. I would like to touch on that here in
4 a few minutes. But if I could, I think what they've
5 dismissed does have something to do with discovery that I may
6 or may have not received, but so far at this time they've
7 received all the discovery they wanted from me in this case.
8 They have sent me zero. But I do have some evidence from the
9 first --

10 THE COURT: What is it you think they may have that
11 would help your case?

12 MR. POWELL: Well, that's a good question. I've got
13 some things I'd like to point out right here that I need. I
14 need those answers to questions plus the deposition.

15 THE COURT: What is it that they have that you think
16 would help you? Not what you hope they have. What is it you
17 think they have that would be helpful in your case and make
18 it survive a motion for summary judgment? Did you file any
19 affidavits in response to the motion for summary judgment?

20 MR. POWELL: No, sir.

21 THE COURT: Okay. Well, you have to.

22 MR. POWELL: Okay. I've got everything -- I've got the
23 answers to what you're looking for. I'm just trying to
24 explain, he says right here --

25 THE COURT: I'm trying to explain to you that a

1 procedure for summary judgment is, when they file it, they
2 base it on certain things such as deposition testimony, which
3 he cited, and other matters which have been part of the
4 record and filed to support his motion for summary judgment.
5 When a person is served with that, they're required to file
6 basically a responsive affidavit which contradicts that and
7 creates some issue of fact to warrant dismissing or denying
8 the motion for summary judgment. You haven't filed any, so I
9 don't have anything to review. Your statements are not
10 sufficient.

11 MR. POWELL: I thought I could discuss his statements
12 because he's entered false statements in this Court.

13 THE COURT: I don't know about false statements.

14 MR. POWELL: I can prove it right here. It's his
15 document. It's on the summary judgment, Your Honor.

16 THE COURT: That's fine. He doesn't have to -- you
17 don't have to prove it. It speaks for itself. For you to
18 say it's false, that's just your position. I don't have
19 anything that contradicts it by way of affidavit.

20 MR. POWELL: He left out vital information. I made a
21 complaint. He took that complaint and recreated it and took
22 out vital information to try to get the Court to have an
23 inflammatory opinion towards me.

24 THE COURT: Inflammatory opinion has nothing to do with
25 it. First of all, where is your affidavit that is required

1 other is intentional infliction of emotional distress.

2 MR. JONES: That's one of them, yes, Your Honor.

3 THE COURT: That's granted. There's no basis for that
4 based on all the pleadings that have been filed. What else?

5 MR. JONES: False imprisonment.

6 THE COURT: False imprisonment. You were convicted, and
7 all they have to prove is probable cause. Clearly they had
8 probable cause because it resulted in a trial, so that motion
9 is likewise granted. What other causes of action do you
10 have?

11 MR. JONES: Assault and battery, Your Honor.

12 MR. POWELL: Your Honor, I can't present anything
13 concerning false arrest?

14 THE COURT: I just told you, you didn't file an
15 affidavit. That's the reason I'm doing this. You haven't
16 responded as you're required by law to the summary judgment,
17 so, yes, you're correct, it's matter of law, has nothing to
18 do with you, has nothing to do with you as a person, it deals
19 with the law. I'm ruling on matters of law.

20 MR. POWELL: Yes, sir.

21 THE COURT: As to the assault and battery, that likewise
22 is granted based on those positions stated in your
23 memorandum. Anything else on this one?

24 MR. POWELL: Thank you.

25 THE COURT: Thank you very much. All the other motions

1 CERTIFICATE OF REPORTER

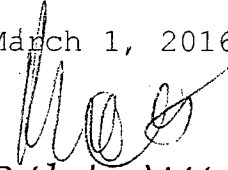
2 STATE OF SOUTH CAROLINA

3 COUNTY OF CHARLESTON

4
5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 9th Judicial Circuit Court for Charleston County,
11 South Carolina, on the 30th of July, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 March 1, 2016

16 
17 Ruth L. Mott

18 Official Court Reporter
19
20
21
22
23
24
25

Shannon Cerone

From: Ben Davis
Sent: Monday, March 23, 2015 1:42 PM
To: 'Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey)'
Cc: 'Don Michel'; 'Jack Powell (carolineschair@gmail.com)'; Shannon Cerone; Kerri Leonard
Subject: Jack Powell v Knology; 13-CP-10-6019

Lindsey,

Good afternoon. As you may recall, Defendant Knology submitted a Motion seeking approval of a Scheduling Order in the above. Rather than reach the motion following jury qualifications this morning, Judge Lee felt it best to continue the case for this week, and suggested that we address this one via status conference. Per her instructions, I am reaching out to you in hopes of setting something up.

Please let me know what Judge Dennis would prefer. Note I have cc'd pro se Plaintiff Powell at his email address on file with the Court. Because he indicated to me via phone this morning that he does not have access to a computer, I will also be mailing him a copy.

Thanks,
Ben Davis

Jack Powell
January 21, 2015
Page 2

X

- 2) Pursuant to Rule 11, SCRCP, Judge Dennis strongly encouraged you to attempt to resolve your motions with opposing counsel in advance of the July 30, 2014 hearings, and in fact, tabled your motions to allow you time to step outside the courtroom into the hallway to conduct negotiations. During our meeting in the hallway, you and I specifically discussed my client's Response to Request for Production No 15. I objected to the Request on the grounds that it was overly broad, and after you and I had the chance to discuss, you ultimately agreed. During the hearing that followed, we placed this agreement on the record with Judge Dennis, who agreed that the appropriate next step would be for you to prepare more narrowly tailored requests and serve them as Supplemental Requests for Production. To date, you've not served the Supplemental Requests for Production. Once you do, I will of course be happy to take steps to gather the appropriate documents in response. Until that point, we will not have the appropriate documents available for review here at my office.
- 3) My client's Response to your Request for Production No. 16 was deemed appropriate, and it remains our position. To date, I have not discovered any new information that would lead me to amend or supplement this response.

✓ Additionally, I understand from your email that you have misplaced, damaged, or otherwise lost some of the contents of your file. As a courtesy, I am reattaching both of your Motions to Compel (one as to my client's responses to your Requests for Admission and the other as to my client's responses to your Requests for Production).

In conclusion, both of the attached Motions were heard and resolved by Judge Dennis on July-30, 2014. According to your email, you are now re-raising some of the very same issues, and moreover, you are threatening to file additional Motions should I not comply with your demands. I hope this correspondence will now conclusively resolve these issues for you. I have now on two separate occasions been forced to dedicate significant time to addressing these issues, and given that the Court has already resolved them, I feel that is far more than adequate.

I look forward to working with you as the case moves forward, but I cannot continue to revisit these same issues. Should you proceed with refileing your motions, I will be forced to seek appropriate recourse in response.

Very truly yours,



Benjamin B. Davis

BBD/src
Enclosures

Shannon Cerone

From: Jack Powell <carolineschair@gmail.com>
Sent: Tuesday, January 20, 2015 5:10 PM
To: Ben Davis
Subject: Re: Court hearing

① Ben I called you on Monday (1-12-15) at 4:20 p.m. and you told me you would call me back in a couple of days to set up an appointment for me to come by and get the Discovery I had requested in my e-mail on 1-9-15. It has now been eight days and also you did not send me more copies of Discovery I had asked for, along with other information I had asked for in my E-mail to be returned within ten days. I'm making this request for the last time before I contact the Clerks office about this matter. I assume 24 hours should be sufficient for you to call me and state your position on all of this.

② On Fri, Jan 9, 2015 at 12:09 PM, Jack Powell <carolineschair@gmail.com> wrote:-
This is Pro se, Jack Powell and i'm contacting you about responding properly to ADMIT #14, that you initially denied but reserved the right to supplement it's response following a reasonable opportunity to conduct discovery. Ben you have had a reasonable opportunity (over five months) to conduct discovery and i expect your answers within ten days for #14 and the following; #15, All Documents about procedures and safety standards to be followed by KNOLOGY employees and contractors concerning setting up, burying, connecting, maintaining and inspecting cable lines on commercial property. You stated "Defendant will make available for inspection and copying these records to Plaintiff at the following location, after sufficiently reasonable advance notice is provided: 735 Johnnie Dodds Blvd. It's been over five months and I would like to come by next week to see these records. #16, Dates of when KNOLOGY or sub-contractors were on the property at 930 Folly Rd. from 1-1-12 to 6-25-12. and your RESPONSE: No Defendant employees visited the property between 1-12-12 and 6-21-12. Defendant reserves the right to supplement or amend this response as discovery progresses. Ben, again you have had over five months to determine when they were on the property between 6-21-12 and 6-25-12 which was also the the time in question that was requested, that you evaded. ALSO, unfortunately for me in court yesterday during my MSJ, about five months ago i had cut up your responses to Admit for preparing a Motion to Compell concerning Evasive Answers to 1, 2, 4, 7, 8, 12, 14 and i misplaced some of the Responses including your RESPONSE #10, that you admitted Knology had removed the cable lines at some point and time after the date of the alleged injury. If you don't mind i would like to get another copy of this Admissions request because i spilled coffee on mine and possibly all the Discovery Responses. I am also re-filing against the Folly Oaks Center and the Marshland Communities since in both cases they were dismissed even though i was not allowed to enter any evidence in my behalf by the same Judge who acted improper when he insulted me in court, 7-30-14. The first Doc. requested Folly Oaks is any other cable company that had service with units A & B after service was disconnected by KNOLOGY on 6-8-08 and 12-1-09 along with other evidence i failed to enter during my MSJ, this will satisfy the Judge next time of who owned the lines. Fortunately your replacement yesterday was treated fairly and I'm looking into the procedure of why my case against MUSC was awarded Summary Judgment because i did not Respond and when i did not know that i had to Respond and i told Judge Jefferson yesterday that you did not Respond and she did not even ask why you did not respond. I will send you a letter and you will receive it Monday, 1-12-15 to verify you received this E-mail that includes my notice to come by your office next week, I will also call you Monday to verify you got this E-mail. Thank you, Jack

On Tue, Jul 29, 2014 at 8:12 AM, Ben Davis <bdavis@mgclaw.com> wrote:

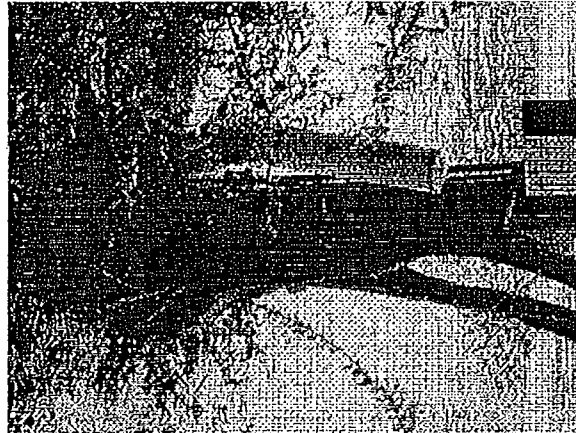
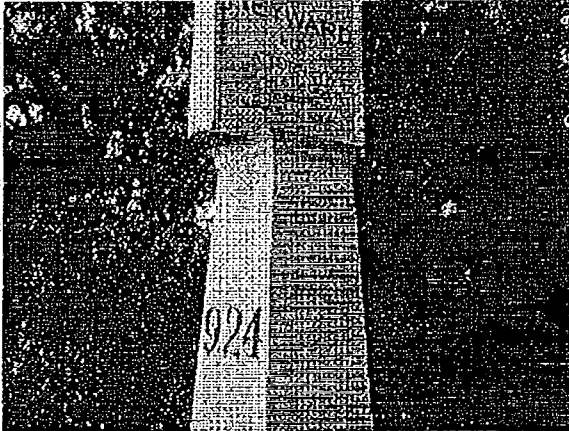
Mr. Powell,

Z-1

Hartford Special Investigations Unit
Photo Sheet

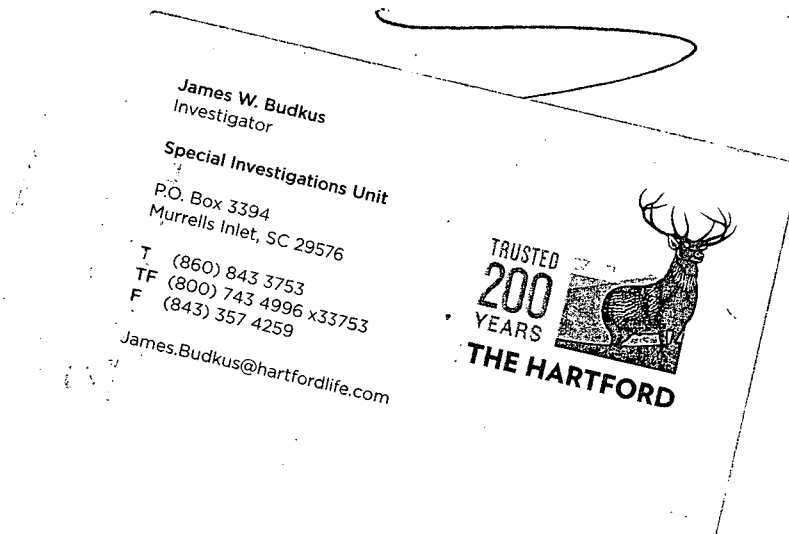
Claim Number: YVCL99682
Date Taken: August 28, 2012
Location: 924 Folley Rd., Charleston, SC

SIU PC No: 2012-13396
Taken By: Budkus
Subject: Loss Location



Loss location 924 Folley Rd, Charleston, SC

Buried wires loss location



Z-2



August 08, 2012

Jack Powell
1402 Apt 8A Camp Rd
Charleston, SC 29412

Re: Insured: Knology, Inc.
Date of Injury: 06/21/2012
Claim Number: GL0010770368
CCPS Number: YVC KL 99682

Dear Jack Powell:

Enclosed is an authorization for release of medical information so that we may obtain the medical records concerning your injury. The medical records are needed to assist us in handling your claim. Please sign this form and return the form to us at your earliest convenience in the envelope provided.

Should you have any questions or need further assistance, please call me at (888) 525-2652 x2304068. Thank you for your cooperation.

Sincerely,

Alison R. Brower
Claim Representative
(888) 525-2652 x2304068

Writing Company: Twin City Fire Insurance Company

Attachment: Medical Release Notice and Authorization
Enclosure: Return Envelope

*Thank you
Jack Powell*

Handling ID:
LTR122
A6B

Page 1 of 2

HIGC-C03200-GL0010770368-YVC KL 99682

The Hartford
P.O. Box 14263
Lexington, KY 40512-4263
Office (888) 525 2652
Fax (866) 809 1178

April 4th, 2017

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.
Civil Case no.; 2013CP1006019
Appellate case no; 2016-001035

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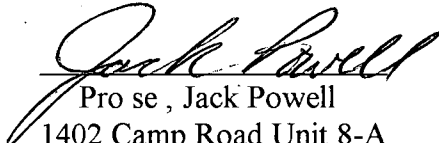
APR 11 2017

SC Court of Appeals

Dear Ms. Kitchings,

This is Pro se Appellant Jack Powell and in the above civil case 2013CP1006019, I am notifying the Honorable Court of Appeals that I have filed a Relief of Judgment to the 9th Judicial Circuit of the Court of Common Pleas of County of Charleston and I have enclosed a copy of this motion.

Signed & mailed on April 4th, 2017


Pro se, Jack Powell
1402 Camp Road Unit 8-A
Charleston S.C. 29412

Expected Delivery Day: 04/10/2017

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APR 11 2017

SC Court of Appeals

South Carolina Court of Appeals
Jenny Kitchings Clerk
Post Office Box 11629
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