THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
9th Circuit Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

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SC Court of Appeals

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

Jack Powell, Appellant,

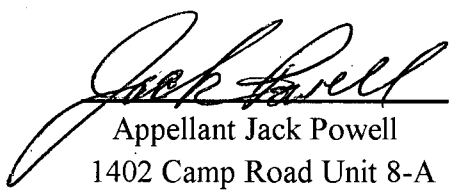
v.

Knology of Charleston Inc. Respondent,

APPELLANTS FINAL BRIEF CERTIFIED

The Pro se Appellant Jack Powell hereby certifies that his Final Brief only contains material proposed to be included in the Appeal and not any other matter that is not relevant.

July 31, 2017



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FORM 13

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[In The Supreme Court]

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R. Markley Dennis, Circuit Court Judge

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

Jack Powell, Appellant,

v.

Knology of Charleston Inc., Respondent,

APPELLANTS FINAL BRIEF

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STATEMENT OF CASE

On June 21st 2012 the 56 year old Pro se tripped over Knology's unburied cable lines and was taken to MUSC because of his injuries and on Oct. 28th 2013 Mr. Powell filed this action against Knology of Charleston Inc. in the Charleston County Court of Common Pleas for the Ninth Judicial Circuit for Gross Negligence, Negligent Supervision of Employees & Sub-Subcontractors and for Breach of Duty.

The Motions for Summary Judgment were heard by the Honorable Judge R. Markley Dennis and he denied the Appellant's motion and then he granted Respondents Summary Judgment on April 2nd 2015 and on 6-3-15 the Appellants Motion to Recuse Judge Dennis, then on 4-5-16 the Order Granting Summary Judgment was signed.

STATEMENT OF ISSUES ON APPEAL

1. Circuit Court erred when Judge Dennis exercised

interruptions, improper rulings, inadvertence and he also refused to recuse himself and it was filed on May 6th 2015.

2. Circuit Court erred when Respondent submitted them a Memorandum in Support for Motion for Summary Judgment before the hearing and failed to require Respondent to submit one to Appellant, after he complained about their failure to do so the day before the hearing. Appellant was in Judge Dennis's chambers when he was notified of this tactic and failed to make the Pro se a copy so he could see for himself if it was "no big deal" when it wasn't even filed with the Clerks Office.

3. Circuit Court erred because Judge Dennis read their Memorandum and then stated it was just the same issues, but the Respondent had submitted an alternative defense while entering a new photo that the Appellant didn't see until after the MSJ hearing.

4. Circuit Court erred when Judge Dennis kept telling Appellant he needed to submit a request for supplemental discovery and Appellant explained that he had ordered him to do so on 7-30-14 and appellant did supplement, but Judge Dennis kept repeating this during the hearing and this was Inadvertence.

5. The Lower Court erred when Appellant was unable to submit rebuttal evidence to the new photo entered in Respondents memorandum that may have created doubt in the Appellants Complaint. Appellant had a legitimate argument of why there wasn't any assertion to the 3rd cable, which may have been a deciding issue for Judge Dennis.

6. The Lower Court erred when signing the Order for Summary Judgment when the Respondents memorandum was filed during the MSJ hearing and Judge Dennis read it before the hearing and Pro se Appellant didn't .

7. Circuit Court erred because the hearing was premature and failed to continue the hearing because of the unanswered ordered supplemental request that was supposed to be returned to the Pro se ten days earlier.

8. Circuit Court erred when not recognizing the Respondent had admitted during the discovery and the MSJ hearing that Knology was the owner of the 2 unburied cable lines they abandoned in the right of way.

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

10. The Lower Court erred when forgetting the statement "if you installed the cables, your responsible. Are you not" and there was a preponderance of admitted discovery where Respondent admitted the lines were theirs and still Judge Dennis granted Summary Judgment.

11. The Lower Court erred when ignoring the fact that the Respondent had broken multiple state, local laws and ordinances which were genuine disputes.

12. The Lower court erred when not believing the Pro se Appellant about his proof in his Complaint, when there was a computer right there in front of Judge Dennis so he could verify the truthful statement by the Appellant.

13. The Lower Court erred when saying "Okay" and didn't question the Respondent why they didn't return their ordered supplemental request that was due 10 days earlier, right after Pro se told Judge Dennis he can't prove 100 % Knology owned the lines without their supplemental production.

ARGUMENT BEGINNING ON JUNE 21st, 2012

1. On June 21, 2012, around 9:00 PM "56" year old Jack Powell was walking up the right of way at 930 Folly Rd. and tripped over an unburied cable line. Mr. Powell was knocked unconscious and injured his head, neck, shoulder and knee. Mr. Powell was noticed lying in the right of way unconscious, on the side of Folly Road by a lady and she called 911. Then EMS arrived and they diagnosed Mr. Powell and applied a neck collar, because he had a traumatic injury. Mr. Powell was stabilized on a stretcher and taken to the MUSC Emergency Room. See Plaintiffs 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 A-E & Plaintiffs complaint p. 1 & memorandum for MSJ reports and injury. Also;

Appellants "4" previous surgeries on his;

1. Forehead injury after striking the ground and being knocked unconscious.
2. Neck where he has disc disease from a previous surgery.
3. Right shoulder where he has rotor cuff disease from a previous surgery.
4. 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 needs a complete knee replacement.

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

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

4. Appellant submits; Phone log states they are concerned and had an expedited installation for today, ASAP! Knology of Charleston Inc. was rightly concerned about a sprinkler system and still went forward and connected the lines without explaining how they legally discovered where the underground water lines and cables were.

5. The "2" lines were just dropped, not buried and left running through the front yard, **DROP FROM POLE TO METER** because there wasn't enough time to discover where all the water lines were to the sprinklers and with a digging machine safely plow a ditch about a hundred feet through the front yard. They were just left trespassing across the adjacent Charleston County property. Then the unburied cable lines were hazardously left lying in the public right of way for about 30 feet and then connected to the telephone pole about two feet from busy Folly Road.

6. **ADMISSION REQUEST # 2** Plaintiffs Informal Request to the Court for 2nd Motion for Summary Judgment Exh. C, where the Defendant admits they "believe" the lines were installed properly. Appellant submits Defendant never introduced any legal documentation of how the underground sprinkler lines they were concerned about were identified and how & who actually buried them. Plain. 2nd MSJ, Exh. K & Plain. motion for reconsideration, Exh. O. This was also an unanswered issue before, during and after

MSJ hearing and violating; Plain. motion for reconsider (R. p.59. Exh Q., p. 3rd para., p.70. Line 1-8, p.76., p. 81., Def. Memorandum p.127 b. iv., p.128 c. i., p. 146 & p.11., Exh K)

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

The burden is only met 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. (R. p.107-109., p.69. #11., p.8., p.128 c. i., p.146., p.96 line 9-23. p.171 line 1-10.)

7. The SCDOT stated Knology didn't acquire the Encroachment Permit that requires legal safety measures to be met and because of the pressure to finish the "expedited request" to finish the job "ASAP" today. This was gross negligence and Defendant made a reckless and illegal decision to just drop the cable lines and eventually abandon their lines after their customers services were terminated on 6-8-2008 & 12-1-2009. See Plain. mot. for recon. (R. pp.76 & 78, #12) Defendant did owe a duty to the their contracted Folly Oaks Centers customers and the local citizens walking up by busy Folly Road and through the right of way, in front of their contracted business. (R. pp.37, 38., pp.56, 57., pp.59-61., pp.109-112).

Hurst v East Coast Hockey League Inc.
371 S.C. 33, 37, 637 S.E. 2D. 560, 562 (2006)
(R. p.61., pp. 8-11. & p.69 #15 & pp.107 line 15 thru p.110 line 13.. p.107 line)

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. Defendants 2 unburied cable lines were connected to units A & b at the Folly

Oaks Center and running around 100 feet through the side of the front yard. Then they ran across the adjacent Charleston County property where they were in fact trespassing and Judge Dennis erred when he was unconcerned about Defendants violation of state, county and city ordinances. Therefore Defendant owned a duty to the city of Charlestons pedestrians and they were negligent when they violated the following, because they didn't want an inspection and because of this negligence they were the most probable owner of the lines and most likely caused the accident; South Carolina Code of Laws Section Public Utilities Title 58-12-310 (e)(2), 58-12-50, 58-12-70, 58-12-10, 56-5-48 and see 2nd MSJ bottom of p. 37 & 38. Underground Conduits, Cables & Wires in Public Right of Way and section 30-151. (R p.120, p.57. p.58. Exh T., p.9., p.11 line 9-18., p.18. Sec. 58-12-10., p.19., p.20. Sec. 58-12-50, 58-12-70, p.22, Insurance Requirements., p.36 Prod. #7., p.37. Prod #8 & New Evidence #4., p.38 line 1-7 & Sec. 30-151., p.43 Admit #2. & 4., p.44., p.48. #4., 7, 8, 11)

9.

the Plaintiff filed a complaint to the South Carolina Board. (R. p.24., p.28-30)

10. On 1-9-15 the Plaintiff emailed the Defendant (R. p.41. Exh. A, para 2 is about documents Request 14, 15 & evasive response 16; Plaintiff reminded the Defendant in para 2., line 7, he would make available inspecting & copying these records to Plaintiff at

the following location, after a sufficiently reasonable advance notice is provided: Johnnie Dodds Blvd. Plaintiff stated in his email it's been over 5 months and I would like to come next week to see these records. (R. pp.35, 53, 54, 63-65., 96-103 & p.97 line 20). See 56 (b) (d)(1)(2) (e)(4) (f), (R. p.125 para. 3., p.128., c. i.. p.146., pp.170 line 1-10 & 171 line 1-10)

11. On 1-12-15 at 4:20 p.m. 3 days after Plaintiff had emailed Defendant, we discussed when Plaintiff could come by to see the records and the Defendant told the Plaintiff on Monday he would call in a couple of days, but Defendant didn't and the the Plaintiff never received these documents and was never allowed to come by their office See (R., p.41., & Exh A. on p.35., & p.62). See 56 (b)(d)(1)(2)(3) subd. (c)(1) & 6 (b), (R. p.7 para. 3., p.128 c. i. & p.146).

12. On 3-13-15 Mr. Davis asked Plaintiff to continue the scheduling of a jury roster selection for trial because the time would allow us to tie up some loose ends on some outstanding discovery issues. Plaintiff agreed only because he thought Mr. Davis was speaking truthfully so he could fulfill his obligation concerning the supplemental Admissions & Production that were still unanswered since 7-30-14, that were ordered by Judge Dennis. See Plaintiffs motion for reconsideration (R. pp.53 & 62).

13. A couple of days later during a telephone call Plaintiff agreed to postpone the jury selection for the need for more discovery and the next day on the 16th Attorney Ben Davis improperly filed his motion for summary judgment only to evade their proper responses to the supplemental admissions and production that was still unanswered. Plaintiff was never allowed to come by to the Defendants office to inspect the records. Defendant knew the filing of the MSJ was improper misconduct, misrepresentation

and the motion was premature. (R. p.53 2nd para) 60 (b)(1)(3)(4)(6) 56 subd. (c)(1)(2) (d) (e)(2)(4)

14. On 3-23-15 Mr. Davis returns the Supplemental Request and states; on July 30th 2014 Judge Dennis denied your motion. Appellant submits Judge Dennis only heard one Admit Request and then told Appellant to supplement his request. The Document request wasn't denied, because Defendant returned them in the hallway. See Plaintiffs motion for reconsideration (R. pp.63-65 & Tran. p.98-104) Mr. Davis tries to confuse the facts by stating the Plaintiffs Supplemental Request for Admit &Documents were simply reasserted no's 4, 5, 7, 8, 11 & 15 were never answered & were relevant business records. The Admit 15. was a completely new request and Judge Dennis made a mistake when he failed to order Defendant to answer at least one of his ordered production 6, 11 and Admit 10 or 15 Supplemental Request. Production 6 where Plaintiff needed the documents of Knology's monetary offer and Judge Dennis was notified during the hearing the manager wasn't working at Knology anymore. Judge Dennis erred because he did not care about manager Lee Endicott until Plaintiff didn't have an affidavit to prove what was already stated under oath by him. Plaintiffs motion for reconsideration (R p.54., & p.75) Therefore this motion was premature (60) (b)(1)(2) (e)(1)(2)(3)(4) (f)(h), 56 subd (c)(1) (d)(1)(3) & 6 (b).

15. On 4-1-15 the day before the Motion for Summary Judgment hearing, Plaintiff was waiting in the hallway for a meeting in Judge Dennis's chambers with Attorney Ben Davis. Plaintiff had asked where was their memorandum for MSJ and he responded that

he had mailed it that morning. Plaintiff asked how can I respond in time when we have to be in court in the morning at 9:30 and Mr. Davis responded with (shrugged shoulders) A few minutes later Plaintiff told Judge Dennis in front of one of his female associates about this and he said that it's "no big deal" because it's just the same issues. Pro se wasn't allowed to serve opposing affidavits. See Plaintiffs 2nd MSJ (R. p. 52 & motion to Recuse Record p. 24 line 8, p. 52 line 4., p.128 c. i., p.146. & p.120).

16. Judge Dennis erred pursuant 60 (b)(1)(2)(3) (d)(3) set aside or reverse Judgment, because of , misrepresentation, misconduct, inadvertence & subdivision (e)(4)(h) 56 (d)(1)(2)(e) & subdivision (e)(3). Judge Dennis should have known Pro se would be at a great disadvantage, because the Defendant did submit new evidence & Judge Dennis abused his discretion concerning Plaintiffs complaint, see Black v. Lexington School Dist. No. 2, 327 S.C. 55, 488 S.E.2d (1997), (R. Def. Memorandum p.125 Para 3., p.128 c. i., p.146.)

17.

Judge Dennis

erred during this MSJ hearing when he did not question the failure of Defendant to deliver their memorandum 56 (e)(f) because Pro se didn't have reasonable time to prepare to respond to the same memorandum Judge Dennis read before the hearing. Motion to Recuse (R. p.24, para. 3 & Tran. p.104., no. 20 thru p.105). Rule 60 (b)(1)(3)

inadvertence, mistakes, surprise & misconduct and 56 (d)(1)(2)(3) & 56 subdivision (c)(2) (e)(4) (h) (R. p.92 line 6-10., p.127 b. i., p.128 c. i., p.129 b. 1st & 2nd para. & p.146) also Black v Lexington Schools Dist (1997), Haines v Kerner (1972)

18.

MSJ HEARING ON 4-2-15

19. See (R. Tran p.97. thru p.103), Plaintiff explained to Judge Dennis that there is an issue concerning improper responses to discovery requests and Attorney Ben Davis states Plaintiff is just reserving the same discovery. Then he states "he believes" which wasn't true, because the Production wasn't actually heard because it was returned incomplete in the hallway before the compelled hearing on 7-30-14 and Plaintiff was ordered by Judge Dennis to submit a supplemental request for Admit and Production which is the fact of how it was resolved. Because there were still some issues when the Defendant didn't return the supplemental request that Judge Dennis ordered. Judge Dennis failed to ask the Defendant if they were supposed to return the discovery ten days ago and he failed to continue this MSJ hearing because it was premature. (R. p.170, line1-6., p.171 line 1-10., p.128 c. i. & p.146., 60 (b)(3) 56 (b)(1)(2)(d) & subd. (e)(4).

20. Furthermore Plaintiff was denied a full & fair opportunity to complete discovery and Judge Dennis ordered the supplemental request because he thought there was a likelihood that this discovery would uncover relevant evidence. Baughman & American Tel. Co. , 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) and Haines v Kerner, 404 USS 519 (1972) (R p.128 c. I. & p. 146) Rule 56 (f)(g) 37 (a)(3) subdivision (e)(2)(3)(4) (h).

21. (R. Tran. p.98 line 1-20). Judge Dennis in the court room after Plaintiff agreed the first time and

Plaintiff also stated Mr. Davis was trying to confuse the court and Judge Dennis stated "I'm not confused at all" Appellant submits he made a mistake, because he had the file when he stated he appreciates Plaintiffs position. Appellant submits Judge Dennis was mistaken, because Respondent didn't respond properly with the supplemental request. Rule 60 (b)(1)(3) & 37 (a)(3) 56 (c)(1)(a)(b) (c)(2)(3) (d)(1)(2)(3) subdivision (e)(2) and displaying inadvertence. (R. p.96 line 9-23., p.97 line 4-25., p.167 line 10-23., p.171 line 4-10).

22. (R. p.98. line 21 thru p.99 line 6). Judge Dennis denied Plaintiffs motion even after disclosing the Defendant had not returned the supplemental discovery Judge Dennis had ordered. Therefore Judge Dennis erred when he failed to ask the Defendant if they were supposed to return the supplemental discovery and continue the hearing, because it was premature. Rule 56 (d)(1)(2)(e) & subdivision (c)(1)(e)(2)(3) & 60 (b)(1)(3)(4)(6)(d)(1)(2)(3), subdivision 37 (a)(3)(e) & 26 (b)(1). (R. pp.25-27., pp.37, 39., pp.40-50., p.91 line 1-10).

23. (R. p. 99 line 8-20) where Judge Dennis erred when he failed to understand that

discovery is the main ongoing issue in this case other than Judge Dennis being confused about what has transgressed during these hearings concerning his order and unproduced production that proved 100% Knology owned the lines. Judge Dennis tells Plaintiff he needs to file a motion to produce Admit that was already filed on 6-10-14, on 6-16-14 for Production. See Charleston Cnty. Circuit Court Index when Judge Dennis heard Knology's compelled case on 7-30-14. Judge Dennis was confused and made a mistake by ordering the Plaintiff to submit a supplemental request which was an absence of attention and inadvertence. 60 (b)(1) & 56 (b)(c)(3) (d)(1)(2)(3) (e)(1)(2)(4) subd. (e)(2) & (R. p.42-50).

24. (R. p.99 line11. thru p.100 line12). Plaintiff discloses the letter from his 2nd MSJ (R. p.46) where the Defendant admitted Plaintiff was ordered to supplement and they were never answered properly. Mr. Davis admits in his email he would be happy to respond to supplemental discovery, but otherwise I referred him back to our original answers from July. Again, Judge Dennis errs when he fails to ask to see the evidence that the Plaintiff was discussing, which was his orders from 7-30-14 and this was an issue, because he failed to continue the case after he was notified of the improper discovery tactic by Defendant that denied Plaintiff to plead his case with the ordered discovery. Motion was premature see Frederick Hart & Co. Inc. v Recordgraph Corp. 169 F.2d 580 (3d Cir. 1948) (R. 16, 37, 40), United States Kolton T/a v Halpern, 260 2d 590 (3d Cir 1958), (R. p.16, 38, 40. & p.90 para 3, p.92. 2nd para., p.170 line 1-6 & p.171 line 1-10) 60 (b)(1)(3), Rule 56 subd. (c)(1)(2) (e)(2)(3) & Rule 6 (b) 37(a)(3).

25. (R. p.100 line 10-21) Judge Dennis again stating that the Pro se hasn't filed a

motion to compel & Plaintiff responds that he had before July 30th. Then Judge Dennis firmly states, "Now, be careful what you're saying" and he looked into his computer for the first time, because apparently he had relied on what Mr. Davis had stated twice was fact, when he said he "believes." Appellant submits the Lower Court is confused because his statement was correct and Judge Dennis was wrong while he was again displaying

Inadvertence 60 (b)(1)(3) 56 (1)(3) 56 (c)(1)(a)(b) (3)

(R. p.167 line 10-21., p.36 line 6-8., p.40-50., p.63-74 & p.25. last para thru p.27)

26. See (R. p.100 line 22. thru p.101 line 1-17). Just before Plaintiffs motion to compel hearing on July 30th 2014, for the compelled to answer, Incomplete & Evasive Admissions & Production, Plaintiffs Motion To Recuse (R p.24 para 3., p.35-37. Exh. A-J, p. 41-50). Mr. Davis was finally contacted about returning the production request and tries to evade answering the supplement request. 60 (b)(1)(3) 56 (c)(1)(b) (d)(1)(2)(3) 37 (a)(3) (R. p.15, 19, 21., p.34 & 36) & Baughman v American Tel. and Tel. Co. (1991).

27. On 7-30-14 in the hallway and ten minutes before the 9:30 am hearing, the Defendant handed the Plaintiff their responses to the Plaintiffs Production request and then the Plaintiff notified the Lower Court that the Defendant failed to answer properly again and therefore there are still issues. Judge Dennis failed to question the Defendant about their second failure to respond properly, because he was confused and

inadvertence by Judge Dennis.

See Rule 60 (b)(1)(3)(4) & Rule 56 (1)(2)(3) subdivision (e)(1)(2)(4). (R. p.101 line 1-17., p.54. 1st para., & p.63). 56(1)(2)(3), (R. p.167 line10-23., p.170 line 1-6 & line 25 thru p.171). Rule 60 (b)(1)(3)(4),

28. (R. p.101, 18-25) Judge Dennis again errs when he makes confusing

statement "Then you need to be specific as to what it is you think he should give you" which was what he ordered on 7-30-14 and then he states; "you haven't done that" and stating firmly, "I'm telling you that your going to file a supplemental request that says "I want these" "not just give me all documents." 60 (1) Inadvertence. (R. p.96 line 9-23., p.97 line 18-25., p.36 Exh F., p.39 Exh F., & p.46.

29. Judge Dennis also erred because he was unaware of the responses that were again evasively answered in his ordered supplemental request for Admissions and Production, because he allowed the Defendant to continue their improper responses, because their responses were 10 days late and were necessary for the MSJ hearing. See Appellants (R 2nd MSJ p.35-37 to conclusion., Exh F-J & p.17-23., p.46-50 &102) where Judge Dennis was notified about the supplemental discovery and he should have been aware Plaintiff is arguing the lack of relevant evidence, because of their intentional failure to return the discovery he ordered on 7-30-14. The Pro se was at a disadvantage and the MSJ was premature. Furthermore the evidence that was already submitted by Plaintiff should have been sufficient to deny Defendants request. Rule 60 (b)(1)(3) for mistakes & inadvertence, 56 (b)(3) (c)(2) (3)(d)(1)(2)(3) (e) & subdivision (c)(1)(e)(2)(g). Haines v. Kerner (1972) & (R. p.167 line 10-21., p.36 line 6-8., p.146., p.120., p.32. no. 3., p.39 Exh F., p.40 Exh I. & J. 1st & 2nd para., p.41-50., p.54. Exh D., p.55. Para 2 & 3., p.60 para 4 & 5., p.63., pp.66 thru 74., p.92. 2Nd & 3rd para., pp.96 line 9 thru p.97 specifically line 20-23., pp.99 – 103.,. p.108 line 4-17., p.167 line 10 – 15., p.168 line 8 – 25., p.169 line 6 – 12., p.170 line 5-10., p. 170 line 25- p.171 line 8-10., p.37 line 6-9 & p.120).

30. (R. p.102 thru p.103 #7) Plaintiff submits he followed Judge Dennis's order and and he should have realized he had made a mistake and this was an ongoing issue. He again states firmly "right now" and he abused his discretion. Then tendered; Plaintiffs 2nd MSJ,

(R. p.47-50). Inadvertence

60 (1)(4) and 56 subdivision (e)(4) also Black v Lexington School Dist. (1997).

See Plaintiffs motion to compel (R. pp.42-50., p.101)

#10 Admit; Appellant submits originally the Respondent did not deny they were contacted or they removed their unburied lines and Appellant submits Respondent knew exactly what time they removed their lines, because this removal took place just minutes after they took the photo they submitted in their memorandum for MSJ (R. p.146., p.128 c. i., p.146., p.127 b. iv., p.7 last para., pp.119 & 120 also pp.9,21,22.)

#12. ADMIT; Appellant submits believing they installed their lines properly, is an issue. (R. p.5. B. iv. & p.129 2nd para., p.91., p.107 & p.108 line 12-25)

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

RESPONSE; ? Hasn't been answered yet and Judge Dennis should have ordered this Admit to be answered during the MSJ hearing. (R. p.50., p.128,. p.146., p.5 iii, p.65., p.92 & p.120)

31. Also Plaintiffs 2nd MSJ on (R p.42, Admit 1). where Knology admits their lines were connected to units A & B and at this time they were unable to determine if their lines were running across the public right of way. Judge Dennis erred when he failed to realize their new evidence, the photo of their 2 unburied cable lines proved they were in the right of way. This new evidence was submitted to attempt to create an alternative defense which only proved Comcast's single line was partially buried, undisturbed & irrelevant. Plaintiff wasn't allowed a full & fair opportunity to complete discovery and to be able to see & use their new photo during the MSJ hearing. 60 (b)(1) Inadvertence, 56 subdivision (c)(1)(a)(b) (e)(2)(3) 37 (a)(3) & Baughman v American Tel. and Tel. Co. (1991) (R. p.3

para 3., p.5. b. i. & iv., p.128 c. i., p.146., p.129 1st & 2nd para.)

32. (R pp.99-103 line 1-25) Plaintiff acknowledges he mailed his supplemental requests on 2-2-15. Plaintiff had not received the ordered request. (R. p.101 line 7-17) Therefore at the time Judge Dennis erred, because he should have continued the MSJ. It was premature and Judge Dennis is now firmly telling Plaintiff to file the same motion to compel that's in his hand. (R. p.100 line 4-13., p.41., p.46., p.62-65., p.92 2nd para., p.96 line 9-25., p.97 line 18-25., p.36 Prod. 7., p.48 no. 7., p.102., p.128 c. i., p.120 & 146) It was already compelled and Judge Dennis erred because it was his order & it was listed as part of the record on his computer in front of him, this was inadvertence & 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 Baughman v American Tel. Co (1991), (R pp.14, 15, 18, 19, 21, 34, 36).

33. (R p.104, line 23-25 thru p.105, line 1-3) Appellant submits this was inadvertence by Judge Dennis & misrepresentation and misconduct by Mr. Davis when he told Plaintiff he mailed their memorandum the day before the MSJ hearing when he had already sent Judge Dennis a copy, who stated "you did" and this was before the Defendant filed it with the Charleston County Clerk of Court. Which was improperly filed at 1:28 p.m. after the MSJ hearing. See above #15. Defendant intentionally didn't send or hand the Plaintiff the same memorandum. See also 60 (b)(1)(2)(3)(4) 56 (f) subd. (e)(2)(4)(h) (R. p.8. no. 7 & 12., pp.16, 17., p.27. no.15., p.128 c. i., p.146., p.37. para 2. & Production no.8., p.40. 1st para., p.58 Exh H)

34. Plaintiff made a complaint to Judge Dennis about this the day before the MSJ hearing and he made a mistake when he didn't acknowledge he had the memorandum and he did not offer to make a copy for Plaintiff so he could have a procedural right to review it before the hearing in the morning and discover for himself whether Defendant

was only submitting the same issues. The photo and argument were in fact submitted in bad faith to create an alternative defense and was an intentional fraudulent tactic which caused the Pro se Plaintiff to be at a disadvantage by not giving him a reasonable amount of time to prepare & respond to the new evidence which was a surprise, mistake, inadvertence, misrepresentation and misconduct. Rule 60 (b)(1)(2)(3)(4) (d)(3) 56 (c)(3) (d)(1)(2)(3) (e)(1)(2) (f)(g)(h), 2nd MSJ, p. 46, 49 & 50, Baughman v American Tel. Co. (1991), (R. p.24., p.30 para. 3 & 4., p.37., pp.48. 7., 8., 11., 15., p.50., no. 15., pp. 52 – 54. Exh. B. C. E-H., p.58. Exh. U., p.67. no.10 & 15., p.78. no.10 & 11., pp., 80, 82, 92, 96, 97, 100-105, 108,109, 114 & p.128 c. i., p.146.).

35. Also Judge Dennis erred on (R p.105 line 1-6) where he is confused because Plaintiff hearing & (R. p.115 line 3-4). Plaintiff submits Judge Dennis was confused and he has only submitted one memorandum on 12-9-14 over 5 months before this MSJ hearing (R p.115 line 3-4). Plaintiff submits Judge Dennis was confused and he has failed to pay attention to the actual progress and procedures that have occurred during this case and during the MSJ hearing. 60(b)(1) Inadvertence.(R. p.24 para 3., p.30 para 3&4., p.52 para 2.

36. (R p.105 line1-7 thru p.106 line line1-19) where Defendant states they weren't guilty of negligent supervision, because the incident didn't take place on property they owned & therefore didn't owe a duty to the Appellant. Appellant submits by law they owed a duty; Ref. the above #7. & 8. & below #35. "if you installed the cables, you are responsible" Judge Dennis erred because he failed to remember his own statement during his ruling. Hurst v East Coast Hockey League Inc. (2006) of Plaintiffs mot. for reconsideration (R. p. 61 & p.127 b. iv., p.128 c. i., p.146., p.129. 1St & 2nd para., p.168 line 5. thru p.169 line 17.)

37. (R. p.105 line 18-25 thru p.108 line 1-11 is where Defendant admits that there is a genuine issue, because there's a chance the lines belonged to Knology and he submits

this case is about the issue of whether Knology buried their lines and Judge Dennis recognizes this case is about whether Knology installed the lines properly. Judge Dennis erred because the Plaintiff had submitted evidence in his complaint and in his 2nd MSJ where Knology intentionally failed to acquire the required Encroachment Permit and they also violated the following laws & ordinances. Plain. 2nd MSJ bottom of (R. pp. 37, 38, 51 & Plaintiffs Motion for Reconsideration p.59-61, 70-74) in Plaintiff's Motion to Compel. S.C. Code of Law 58-12-70 & Plaintiffs motion for reconsideration p.59-60, 58-12-10, 50, 70 & 58-12-50 310 (e)(2) and also S.C. Code of Ordinances Section 30-151 & 154 56 (c)(1) because the Defendant disputed their own denial the lines were theirs and their negligence was the most likely cause Plaintiffs motion for reconsideration p. 61, Ned v Hertz Corp. 356 So. 2D 1074 (La App.4 Cir. 1978). (R. p.37., 38., p.51., 59 & p.71 & p.127 b. iv., p.129. 2nd para.)

38. (R Tran. p.108 line 12-25 thru p.109 line. 1-5) Judge Dennis states if you installed the cables, you are responsible and again Judge Dennis erred because he failed to recognize the intent by their employees to not bury the lines because of the pressure to finish the job that day and Defendant submitted the evidence they contracted two cable lines to units A & B & Plaintiff tripped over one of their lines in the right of way that was connected to Units A& B & Def. admitted they were theirs (R. Plain Mot. for recon. p.67, 4., 6, 7, 8, 11,12, 15 and discovery of Admit 1. of p.40 of Plaintiffs 2nd MSJ & p.48, no. 4, 6, 7, 8, 11. & p.71, no. 2., 7, 10, 12, 15., p.128 c. i., p.129 2nd para., p.107 line 22-25) This was an issue and Judge Dennis failed to see the progress of ownership issue after multiple statements by

Defendant and the discovery submitted in Plaintiffs motions & memorandums were an issue along with Judge Dennis's mistake of inadvertence. See 60(b)(1)(4).

39. Judge Dennis made a mistake when he didn't recognize the Defendant just admitted their accounts units A & B were connected to their lines and he stated he read the memorandum (R. p. 99 line 1-4, p.105 line 1-6 & p.115 line 2-11). Plaintiff had planned to submit this admission during the hearing, but he became confused and intimidated again because of the back and forth discussion over discovery

the Plaintiff was unable to remember to do so. (R. p. 9., 14., 15., 18., 19., 21., 22., 34., 36., 61.)

40. (R. p.109 line 14-25 thru p.110 line 1-3. Transcript is wrong because Plaintiff stated Knology did not acquire a permit and Judge Dennis is either confused on line 6 & 7 or transcript was wrong. Judge Dennis makes a mistake by not questioning the law the Defendant broke, which proves Defendant did in fact exercise intent and owed a duty to pedestrians & Mr. Powell. Also the county would have known of Knology's trespass across their property, the right of way & would have forced them to bury their lines. (R. p.7. 1st para., p.76 & p.83-86).

41. SCDOT didn't know they had to come to the site and inspect and the digging and the burial of the lines, to ensure safety. This was never inspected and this was in fact gross negligence and an issue concerning laws and ordinances broken by the Defendant. Judge Dennis erred when he failed to ask one question concerning the violated permit and he didn't care Defendant had broken a law that makes them liable for any injuries caused

by their intentional negligent act to evade their duty. 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 & Plaintiffs motion for reconsideration (R. p.56., also pp. 83-86., p.2. 3rd para.)

42. (R. p. 110 line 14-19 thru p.111 line 1-4, Plaintiff has submitted multiple times back and forth with Judge Dennis about discovery and that was why Plaintiff wasn't able to prove 100% the lines belonged to Knology.

56 (c)(1)(a)(3)

(d)(1)(2)(3) & 37 (a)(3). (R. pp.15., 18, 19, 21, 34, 36. & p.128 c. i., & p.146).

43. (R. p.111 line 5 thru p.112 line1-8, Plaintiff tries to submit evidence that proves 100% Defendant owned the cable lines, because in their work order it never explained how they figured out where the sprinkler system was running through the front yard and how they figured out where to dig through a right of way and avoid pipes, electrical wiring without acquiring a legal encroachment permit.. (R. p.111 line 5-25., p.112, line 6) Plaintiff is interrupted twice so he is unable to make an argument because Judge Dennis asks questions that changes the subject while Plaintiff is trying to submit evidence of the broken laws and ordinances violated. See the Plaintiffs Motion for Reconsideration (R. p.76 & Plaintiffs 2nd MSJ, p.36 line1-20 & p.37 line 1-22., p.38 line1-17) Judge Dennis made a mistake and this was Inadvertence 60 (b)(1). (R. p.8. line 14-18., p.9. line 1- 22, p.61 line 6-17., p.25 line 21 thru p.26 line 1-23., p.7 line 4-7., p.17., p.21. & p.121).

44. (R. Tr. p.111, L. 20-25) Judge Dennis interrupted Plaintiff again before he could say

and about 30 feet through the right of way. Again Plaintiff is not allowed to submit his own argument, because of the absence of care by Judge Dennis concerning the Pro se's inexperience is only allowed to answer Judge Dennis's questions which effected his right to introduce his evidence and have the right to a fair hearing. Plaintiff doesn't remember responding "no" to the easement question and if he did it was because he was thinking of the only term he has been using, which is the "right of way." Obviously Judge Dennis is confused, because the entire complaint is about Plaintiffs injury in the right of way and there were also photos of the unburied cable lines in the right of way. 60 (b)(1) 56 (e) subdivision (e)(2)(4).

45. (R. p.112 line 3-8) Judge Dennis made a mistake by interrupting Appellant before he finished his argument "it doesn't say anything about what they did to" again Appellant wasn't unable to finish with; legally discover where the sprinkler system was before they began digging 100 feet through their accounts front yard and about 30 feet in the right of way, which was a duty to be performed by their commercial cable company by abiding by the local and state laws. 60 (B)(1) Inadvertence, 56(e) & sub. (e)(4) (R. pp. 7-11).

46. Judge Dennis interrupted again with "What evidence do you have that this is their cable." This would have been answered 100% by the Supplemental Request if Judge Dennis had asked the Defendant to answer Admissions 15., which was submitted in the Plain. 2nd MSJ, (R. pp. 47 & 48 no. 7, 8 & 11., p. 49 & 50, no. 1 & 15 & p.128 c. i., p.146) that would have completely answered Judge Dennis's question that the lines were theirs.

Plaintiff wasn't given a full and fair opportunity to respond with the ordered supplemental request. Furthermore Defendant never submitted any evidence from their old accounts A&B and the owners of the Folly Oaks Center that any other cable company ever had any accounts with their units A & B. 56 (c)(3) (d)(1)(2)(3) (e) subdivision (e)(2) 37 (a)(3) & 60 (b)(1) Inadvertence. (R. p.10 & 11., pp. 16. thru 20., & p. 22.)

47. This is when Plaintiff should have been able to submit his new evidence in the response to Defendants new photo by submitting the photo only to prove they were on the property after 6-21-12, after they stated they hadn't been there since 2009. (R p.146) This proves they were and they had lied to the Court and this was an attempt to confuse & cover up the facts. Plaintiff wasn't able to submit this crucial statement because Judge Dennis allowed this misconduct by Attorney Ben Davis to continue throughout the MSJ hearing. Misconduct, misrepresentation, inadvertence 60 (b)(1)(2)(3), 56 (h) (R. pp.48, p.35 thru 38., p. 40., 51., p. 56. SCDOT & p.58. Exh U. p., 76, 80., 82. 86., p.128 c. i. & p.146).

48. Judge Dennis erred when he knew Plaintiff did not have the Defendants Memorandum and he had one. During the MSJ hearing Judge Dennis stated; (R. p.104 line 17. thru p.105 line 6). "You did and your memorandum is incorporated fully for the purpose for review should that become necessary" and furthermore he read the new evidence before the hearing and Plaintiff wasn't allowed to and Judge Dennis made a mistake when he wasn't paying attention or didn't care about this evasive tactic that caused the Pro se to be at a disadvantage during the hearing. Furthermore Defendants photo proved the cable lines belonged to Knology. 60 (b)(1) Inadvertence. (pp.52., 63-65., p.128 c.i. & p. 146)

49. Also Judge Dennis erred because he should have known the Defendant was trying to conceal the fact the lines belonged to Knology, when they responded to the Plaintiffs Production request #16 in Plaintiffs motion for reconsideration p.58 & Defendant intentionally submitted an untruth by changing the date during their response purely to evade admitting that Knology was on the property after 6-21-12. (R. p.171 line1-10.,p.146)

50. If Plaintiff would have been able to respond to where Defendant states in their memorandum in support of MSJ on (R p.128 (c)(i); Plaintiff has neither identified nor produced any admissible evidence to support allegation that Knology either received or responded to complaints pertaining to the unburied cable or otherwise visited the right of way or the adjacent property at 930 Folly Road since 12-1-2009 when it last had an active account at the location. Appellant would have submitted their photograph (R p.146) they included for the first time, that did in fact prove 100% they were on the property after 6-21-12. (R. p.107 &.108., p.40 Exh B., p.54 last para., p.56 & 58. Exh. U.)

51. Mr. Davis also stated Plaintiff only alleges that 2 of the unburied cables belonged to Knology and "makes no assertion to the third." Plaintiff wasn't able to respond with the facts about the ownership of the other cable line that was in the Defendants new photo. Plaintiff had stated in his complaint on p.1, para 3 "After investigating, the "2" Knology unburied cable lines" which means Plaintiff had a reasonable reason to contact Knology, because Mr. Powell and his daughter had met with Comcast and after their investigation it was determined that the compressed into the ground cable because of the

pedestrian foot traffic stepping on it was theirs. The line was connected to the lawyers office next door and it wasn't stretched out into the direction the Plaintiff fell, which is the other side of the line and furthermore this was because it was almost completely buried, undisturbed and Plaintiffs foot was unable to step under the line and trip to the ground. The 2 Comcast representatives stated they would send someone out tomorrow to remove their line and furthermore Knology took their photo before Comcast removed theirs after 6-21-12 (R. p.92 line 6-18 p.2, para 3., p.8. #7., p.16., p.21., p.26. #6., p.27. #15., p.42 #1., p.43. #4., p.50. #10., p.52., p.55 line 6-20., p.57 B & C., p.128. c. i. & p.146).

52. Also Mr. Davis intentionally waited until the day of the MSJ hearing to file their memorandum for MSJ with the Clerks Office and it was stamped at 1:28 p.m. After the MSJ hearing. The Defendants improper tactic was for the purpose to gain an advantage by the Plaintiff not being able to prepare for the hearing and also not be able to respond with relevant documented evidence. Furthermore, the Plaintiff wouldn't be able to argue the Defendant had stated they hadn't been on the right of way since 12-1-2009 which is an untruth, because their photo proves they were on the right of way after 6-21-12. Rule 56 (c)(d)(e)(f)(g) & 60 (b)(1)(2)(3)(4)(h) because of the mistakes made by Judge Dennis when he allowed this misrepresentation and misconduct by the Defendant to submit their photo in a memorandum that only the Judge saw before the MSJ hearing. Judge Dennis should have realized during the hearing that this was effecting the Appellants right to a fair & impartial hearing. This was inadvertence by Judge Dennis. p.128. c. i., p.146, p.69. #7, #8, #11., p.37. prod. #8., p.80., p.82. #16., p.171 line 4-10., p.58. H #16.,

53. (R. p.96 line 9-23., p.100 line 4-9., p.41 line 7-22., p.46., p. 112 line 9-25., p.101 line 1-25 thru p.103 line 7. Plaintiff has notified Judge Dennis that there was a document

request for all documents concerning Knology offering a settlement for his injuries, which is part of the Plaintiffs complaint about not receiving the discovery that was requested on 2-2-15. Judge Dennis erred when he failed to ask what documents and realize the motion was premature. 56 (b)(1)(4)(6) (c)(3) (d)(1)(3) 60 (b)(1) inadvertence. (R. p.36-37., p.58. H. #16. & p. 96 line 9. thru p.97.)

54. See production request no.6 which was asked in Judge Dennis's ordered supplemental request in Plaintiffs 2nd MSJ, (R. p. 37 & p.48 no.11) to respond to when they came to the property to remove the lines & Plaintiff could have submitted the new evidence the Defendant submitted in their memorandum in support the MSJ that does in fact prove they were in the right of way when their cable lines were removed.(R. p.128 c. i., p 146) 60 (b)(1)(3) mistake, inadvertence, misconduct, misrepresentation. SCRCP 56(e)(f)(g),37(a)(3)

55. (R. p.112 line 17-25) Judge Dennis again hears about the supplemental request, that wasn't answered properly and then Judge Dennis errs when he asked "remove the lines" which should have been answered during their responses and Judge Dennis is also questioning when their lines were removed, which is an discovery issue. See Plaintiffs (R. p.35 Admit #10 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 Knology knows exactly what time they were in the right of way after 6-21-12 to remove their 2 cable lines. See also (R. p.36) where Defendant will supplement the documents and again Judge Dennis failed to require Defendant to properly answer his ordered supplemental request. 56 (b)(c)(3) (d)(1)(3)(f), subdivision (c)(1)(b) (e)(2)(4)56. (R. p.40, Admit #1., p.42 & p.43. #1, 2, 4.)

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

SUPPLEMENTAL ADMISSION REQUEST

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

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

#12 ADMIT; according to local laws and procedures these 2 unburied cable lines were supposed to be buried.
Therefore Appellant submits that this is an issue because Respondent only believes their cables were buried and Judge Dennis erred because he didn't allow discovery to continue.

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

RESPONSE; ? Never answered and is a genuine issue

SUPPLEMENTAL PRODUCTION REQUEST

App. 2nd MSJ, Exh. G & H

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

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

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

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

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

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

57. (R. p.112 line 7 thru114 line 9) Judge Dennis erred because apparently he didn't read the first page of the Plaintiffs complaint before the hearing and he should have read it after

the Plaintiff stated it was in his Complaint instead of him incorrectly stating "No, it's not" when it was. Then the Plaintiff could have directed Judge Dennis to see this meeting took place in his ordered supplemental production request #6 (R. p.48) located in Plaintiffs memorandum for MSJ (R. p.21., his 2nd MSJ supplemental request p.48, no. 6.) That were asked under oath by the Defendants attorney. Therefore the Plaintiff did not need an affidavit to prove to the Lower Court this meeting took place and a offer of a settlement was made. 60(b) mistake by Judge Dennis when he failed to be familiar with Plaintiffs Complaint and he wasn't paying attention. This was also inadvertence and also see Rule 56 (c)(3) (d)(1)(3) & 28 USC 1748 a formal affidavit is no longer required.

58. Plaintiff was very surprised that Judge Dennis would even make the mistake of asking for an affidavit since the Defendant had already stipulated that it had happened in their production response #6 by stating "the amount in controversy." Furthermore Judge Dennis had this evidence in front of him and after Appellant stated "my wife called the next day after I was injured." Judge Dennis erred because he interrupted and he was incorrect when he stated; "Well, I'm sure you don't" Complaint (R p.2 line 20-25., p.10 #6., p.21., p.26 line 9-22., p.27 line 5-7., p.48. #6., p.55. Exh N.,p.56. #6., p.57. D., p.69. #6., p.75., p.113 line 13 thru 25). Judge Dennis has made a mistake and continues about an affidavit that wasn't necessary and because of inadvertence he makes a mistake. Pro se Plaintiff requested all documents to resolve this issue concerning the meeting with manager Lee Endicott which turns out to be a crucial point caused by Judge Dennis, who ruled improperly. 60(b)(1) mistake and inadvertence,

and furthermore he revealed his absence of attention and made a mistake by failing to look at Plaintiffs Complaint on his computer that was in front of him, to verify his opinion and statement was correct. Rule 56 (d)(1)(2)(3) (e)(1)

59. (R. p.114, line1-13) Then Plaintiff discloses the information uttered by Mr. Davis concerning the manager Lee Endicott and again Judge Dennis is notified the Defendant never returned the documents and why he was offered the money and Judge Dennis states "Okay." Judge Dennis erred because he didn't ask one question about his ordered supp. Request for the Documents that were never returned and why the monetary offer was made by the Knology manager Lee Endicott who is now not an employee and this is a genuine issue overlooked by Judge Dennis. Again he demonstrated absence of attention and care while carelessly effecting the Pro se Plaintiffs rights to have a fair & impartial hearing. (R. p.10 #6., p.101 line 1. thru p.103. Rule 60 (1) Inadvertence and Rule 56 (c)(3) (d)(1)(2)(3).

60. (R. p.114 line14-25 & p.115 line1-2) Plaintiff again stating he can't prove the cable lines belonged to Knology 100% without the Production that Judge Dennis ordered and he stated "Okay." Judge Dennis erred because these are genuine issues that prove their admitted liability and the improper procedures were allowed by Judge Dennis. Judge Dennis is demonstrating absence of attention & care of what he has ordered Defendant to do on 7-3-14. His disregard for proper procedure of discovery and the denial of the facts did in fact have ab effect on Plaintiffs right to a fair hearing and also the Plaintiff was denied his right to submit another statement in his behalf after Judge Dennis stated

"Well I'm sorry about that" when it was his actions and absence of attention that caused Plaintiff to be apprehensive and confused while Judge Dennis continued to make mistakes concerning proper procedures of discovery. This was inadvertence (60) (b)(1) see Rule 56 (d)(1)(2)(3) (e)(1)(4), subd. (e)(4) & Haines v. Kerner 404 USS 519, (1972)

61. (R. p.115, line 3-24) Judge Dennis never asked earlier which Production request was this, which proves Plaintiffs argument and he should have read no.6 in the Plaintiffs Complaint p.2. 6th line from bottom, Memorandum p.10. #6, 2nd MSJ p.48. #6, Motion for Reconsideration p.52. Line 4-10., p.56. #6., p.24. Motion to Recuse Line 8-14. He is now Pro se about a deposition to prove this meeting took place and states "no statement" and "There's no statement other than your statement, correct?" The Plaintiff responds; and didn't allow Plaintiff to submit his argument of proof that it was a sworn statement and Judge Dennis should have known this was a sworn statement. This was inadvertence 60(b)(1) 56 (f) and (g). Appellant had set forth specific relevant facts that were genuine disputes. 56 (c)(1)(a)(3)(4) (d)(1)(2)(3) (e)(1).

62. Plaintiff tries to explain the meeting again and Judge Dennis again says "Yes" but his demeanor means no, so Plaintiff after being apprehensive, frustrated and now confused he just gives up and agrees with Judge Dennis by saying "no" to his own factual sworn statement. Then Judge Dennis proves he is confused and errs because he cites a golf course case where a lawyer swore he talked to an expert which has nothing to do with the Plaintiff and his wife meeting with the Defendant to acquire a check to pay for his

Doctor Bills. Plaintiff had proof this meeting took place by the Defendants sworn response "amount in controversy" and again Pro se wasn't allowed to argue his position and he should have been allowed more time for discovery. Inadvertence 60 (b)(1) 56 (e)(d) (2) subd. (c)(1)(b),56(c)(1)(a)(3)(4) (d)(1)(2)(3) (e)(1).(R. p.171 line 4-10., p.21 line 1-25)

63. Furthermore Judge Dennis made a mistake by disregarding this relevant evidence the Plaintiff tried to submit during the hearing because there wasn't a need for an affidavit. Because Plaintiffs position was supported by materials in the record and relevant facts that were discovered while under oath and this does entitle the Plaintiff to survive MSJ. The formal affidavit was no longer required pursuant 28 USC 1746 and Rule 60 (b)(1)(4) inadvertence and Rule 56 (c)(1) (a), (3), (d)(1)(2), (e)(1) & subd. (e)(2). (R. p.115 line 2 thru p.116 line 1. see p.10 Request #6 and also thru line 22 on p.116).

64. The Plaintiff was never allowed to visit the Attorney's office to inspect their documents and retrieve the statements made by Knology's manager to their upper office about the incident and their financial offer. Also Plaintiff never received the documents about their Hartford Insurance Company representative Mr. Budkis who came to Mr. Powell's home for an interview to try to work out another settlement. Plaintiff's Complaint (R. p.53. Exh. A, B, C., p.2, 7th line from bottom., 2nd MSJ p.39 thru p. 41, p.46, p.48., #4. #6. #7., p.49, p.50 #12).

65. Plaintiff submits Judge Dennis interrupted the Pro se 15 times and caused the Pro se to be apprehensive and also confused. Furthermore, Judge Dennis did not hear all of the relevant evidence

because of his Inadvertence that did in fact cause his abuse of discretion. He failed to allow proper procedure of discovery to continue & because of his mistake he denied Pro se Mr. Powell from submitting relevant evidence that supports his claim of how the lines were just legally dropped on the ground and eventually just abandoned by Knology. Judge Dennis erred when he didn't realize this was an attempt to hide the fact they didn't want their work site to be inspected by the SCDOT to determine their proper burial of their lines in the right of way. "ASAP" Therefore see; Haines v Kerner 404 USS 519; (1972), Black v Lexington School Dist. (1997) & 60 (1)(3) Inadvertence

during the hearing, 56 subdivision (e)(4). (R. p.99 line 11-23., p.100 line 4-13., p.101 line 1-9., p.102., p.103.,line 15 -24., p.104 line 1-8., p.109 6-20., p.110 line 14-25., p.112 thru p.114., p.171 line 4-10.).

ORDER FOR GRANTING DEFENDANTS MOTION FOR SUMMARY JUDGMENT

66. Plaintiff submits the Defendant states they never possessed, owned or had control over any right of way and therefore Knology does in fact owe the Plaintiff due care in the right of way, because of the evidence submitted. Ref. Prod. no. 6, 7, 11, 12, 16 and Admit No. 15, along with Supplemental Requests for 4, 6, 7, 8 and 11, also state & local Law (R. pp.10, 11, 18-23, 25. para 5., p.36 production 7. thru p.38. p.40 Admit 1., p.42-45., p.47-51., p.56 Exh O., p.57-61., p.68-76., p.78., p.80-86., p.90 line 11-12. & line 4&5 from bottom. p.107 line 15-25., p.108-110 line 1-13., p.111&112., Sections 58-12-10, 50, 70 & 310 (e)(2). Including Defendants failure to acquire the SCDOT Encroachment Permit and their new photo submitted in the Defendants Memorandum for Summary Judgment that proved Knology was on the property and removed their "2" unburied cable lines after 6-21-12 Pursuant Rule 56(3), the South Carolina Code of Laws Section 58-12-310 (e)(2), 58-12-50, 58-12-70, 58-12-10,58-12-310 (e)(2), 56-5-480, 27-3-60, 30-15, (R. Memor. In Support

for MSJ pp. 18-20 & 22 and Plaintiffs motion to reconsider p.76.)

67. PROD. #12. The customers names and addresses of each unit at 930 Folly Road. that the "2 unburied cable lines were contacted to. See p.16

DEFENDANTS RESPONSE ; 930 Folly Road, suite/Unit A: Customer: Staysmayer, Inc., c/o Staysmayer Properties service connected 12-1-09 by Knology technician Eugene Walker 930 Folly Road, Suite/Unit B Customer: Moms, Monkies and Mermaids Service disconnected 6-8-08 by Knology in house technician Eugene Walker.

68. Plaintiff submits the Defendant just admitted the unburied cable lines were theirs and the only way Defendant could answer with their units A & B is because they were on the property after 6-21-12 to inspect the side of Folly Oaks building to see if the unburied cable lines were theirs and were still connected to units A & B. Plaintiff submits this is a relevant issue and Judge Dennis made a mistake when he granted Summary Judgment after the Defendant had already admitted verbally to Judge Dennis that the lines belonged to them & this admission of liability response to Production no.12. (R. p.108 line 1-3., p.54 2nd para, p.107 line 7-25, p.146)

69. Plaintiff submits the evidence speaks for itself, because Knology entered their new photograph they took in the right of way after the Comcast visit and after their manager was contacted by Plaintiff. (R. p.146) Judge Dennis erred because it was his fault the Plaintiff and himself didn't read the Defendants new evidence in their memorandum before the hearing. See 56 (e) Sub. (h)

Ref. 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), Rule 56 subd. (c)(1)(b).

CONCLUSION

Judge Dennis made a mistake before the MSJ hearing when he ignored the Respondents misconduct & misrepresentation when they didn't mail or hand the Pro se their memorandum in support for summary judgment the day before the hearing. This improper action caused the Pro se to not have access to their new evidence that was submitted in their memorandum. Their evidence was used against the Pro se as an alternative defense during the MSJ hearing and also in the Order. Judge Dennis made a mistake when he exercised inadvertence which caused an absence of attention of care and that denied the Pro se his right to a fair and impartial hearing.

Furthermore Pro se was denied his right to acquire evidence from Judge Dennis's ordered supplemental request for production and admit because he failed to enforce proper procedures of discovery of the genuine issues that were in dispute before, during and after the motion for summary judgment hearing. His failure to pay attention to the importance of discovery to the Pro se denied his right to prove that Knology was the 100% owner of their 2 unburied cable lines. Black v Lexington School Dist. No. 2 (1997), Baughman v. American Tel. And Tel. Co. (1991) Including when:

Judge Dennis stated on (R. p.108 line1-3) "I understand that, but it's an issue of fact as to whether it was performed properly, wasn't it?

Then Judge Dennis states on line15-17 "if you installed the cables, you're

responsible. Are you not?"

Both the Appellant and Respondent submitted a preponderance of evidence the lines belonged to Knology and they evaded discovery. Also Knology never submitted which employee removed their lines after 6-21-12 and they never submitted any evidence that another cable company had a contract or service with their customers at units A & B since 2006. Therefore Judge Dennis should have realized the Defendant owned the lines and Knology was at fault for Mr. Powell's injuries, because their new photo did in fact prove they were in the right of way after 6-21-12 to remove their lines.(R. p.146 &128 c. i.)

PRODUCTION REQUEST #16

Appellants motion for reconsideration p.58

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

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

Appellant submits Attorney Ben Davis intentionally submitted an untruth by changing the date during his response purely to evade admitting that Knology was on the property after Mr. Powell's injury. Again, their new photo proved they were on the right of way after the 21st, then they were mysteriously moved. Def. Memorandum last photo. (R. p.146., p.128 c. i., p.170 line 1-6., p.171 line 1-10 & p.92 line 6-10)

DOCUMENT REQUEST no.12.	PRODUCTION REQUEST no. 7
(R. p.57 Exh Q)	(R. p.58 & 80)
(R. p.4 Exh D)	(R. p.36)

Then Mr. Davis stated; Tran. p.108 line 4-11 "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." (R.p. 96 line13-21., p.97 line13-17., p.146., p. 40., pp. 100-103,p.125 para. 2., & p.128 c. i., p.146.

Appellant submits he had entered substantial evidence that raised genuine dispute to deny their motion and the Defendant knew at the time of their statement the only reason the Plaintiff hadn't submitted the evidence that proved Knology was the 100% owner was because they exercised misconduct, misrepresentation and withheld relevant evidence from the Court and Judge Dennis erred when he allowed this to happen. See

. Furthermore pursuant Rule 56 (d)(1)(2)(3) the Appellants arguments were "well pleaded" considering his lack of discovery and the biased attitude by the Lower Court. Also the Third Circuit cases have taken the view that summary judgment must be denied pursuant Frederick Hart & Co. Inc. v Recordgraph Corp. 169 F.2d 580 (3d Cir. 1948), United States ex rel. Kolton v.

Halpern, 260 F2d 590 (3d Cir 1958). (R discovery complaints)

Therefore the Pro se Appellant Jack Powell requests the Honorable Court of Appeals to Reverse this ruling of summary judgment by Judge Markley Dennis, because of the mistakes, false statements, misconduct, misrepresentation, inadvertence and because of the relevant evidence the Pro se submitted that revealed the genuine issues of disputes. Also because of the Defendants new photo that was submitted improperly that proved 100% that Knology was in fact in the right of way and removed their 2 unburied cable lines that cause Mr. Powell harm on the night of 6-21-12. (R. p.146 and p.128 c. i.)

Signed & mailed on 7-31-17

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