

FILED
APR -7 2017
CLERK'S OFFICE
CIVIL DISTRICT COURT

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO.: 2017-3366

DIVISION E

SECTION: E

RICHARD HERNANDEZ

VERSUS

SECTION 16

CARDELL HAYES, USAA CASUALTY INSURANCE COMPANY,
RAQUEL SMITH, as the executor of the estate of the deceased William Smith,
and FIREMAN'S FUND INSURANCE COMPANY

FILED: _____
DEPUTY CLERK

PETITION FOR DAMAGES AND REQUEST FOR NOTICE

Petition for Damages

NOW INTO COURT, through undersigned counsel, comes Richard Hernandez (Hernandez), a person of the full age of majority and a resident of the Parish of Jefferson, State of Louisiana, who, with respect, represents as follows:

DALE N. ATKINS
402 CIVIL COURTS BUILDING
421 LOYOLA AVENUE - ROOM 402
NEW ORLEANS, LA 70112
1. 504-407-0000

Made defendants herein are:

- A. CARDELL HAYES (Hayes), who, upon information and belief, is a person of the full age of majority and a resident of the Parish of Orleans, State of Louisiana;
- B. USAA CASUALTY INSURANCE COMPANY (USAA), who, upon information and belief, is an insurance company licensed to do and doing business in the Parish of Orleans, State of Louisiana;
- C. RAQUEL SMITH, AS THE EXECUTOR OF THE ESTATE OF THE DECEASED WILLIAM SMITH (Smith), who, upon information and belief, is a person of the full age of majority and a resident of the Parish of Jefferson, State of Louisiana; and
- D. FIREMAN'S FUND INSURANCE COMPANY (Fireman's Fund), who, upon information and belief, is an insurance company licensed to do and doing business in the Parish of Orleans, State of Louisiana.

Receipt Date	4/11/2017 3:17:00 PM
Receipt Number	622344
Cashier	ccoughn
Register	CCOLASHI
Case Number	2017-03366
Claim Total	\$444.50
Amount Received	\$0.00
Balance Due	\$ 0.00
Change Due	\$ 0.00
Amount of Insurance Paid	\$0.00
Check # 3855	\$500.00

2.

Item	Charged	Paid	Bal
Petition for Damages	\$444.50	\$444.50	\$0.00
Fax Fees	\$15.00	\$15.00	\$0.00
Judicial College	\$0.50	\$0.50	\$0.00
Building Fund Fee	\$25.00	\$25.00	\$0.00
Management Expense	\$10.00	\$10.00	\$0.00
JSC	\$24.00	\$24.00	\$0.00
Supplies	\$0.00	\$0.00	\$0.00
Printing Fee	\$0.00	\$0.00	\$0.00

That on or about April 9, 2016, Hernandez was a passenger in a 2014 Mercedes G63 operated by William Smith Eastbound on Sophie Wright Place, in the Parish of Orleans, State of Louisiana, when suddenly and without warning the 2014 Mercedes G63 operated by William Smith struck a 2008 Hummer HU2 operated by Hayes in the rear.

3.

William Smith then fled the scene of said collision and, thereafter, the 2008 Hummer HU2

operated by Hayes struck the 2014 Mercedes G63 occupied by Hernandez in the rear.

4.

The 2014 Mercedes G63 occupied by Hernandez then struck a 2013 Chevrolet Impala operated by Jonathan Whipple in the rear.

5.

Hayes and William Smith then began aggressions and an altercation which ended with gunshots being fired and ultimately the death of William Smith.

6.

As a result of the events described above, Hernandez sustained personal injuries and other damages.

7.

That the sole and proximate cause of Hernandez's injuries and damages was the negligence of Hayes and William Smith in the following respects, to wit:

- a. In following too closely;
- b. In failing to use due vigilance;
- c. In failing to keep a proper lookout;
- d. In failing to see what they should have seen;
- e. In traveling at an excessive rate of speed;
- f. In failing to take steps to avoid the accident;
- g. In striking another vehicle;
- h. In failing to have their vehicles under control so as to keep from striking another vehicle;
- i. In failing to steer their vehicles properly so as to avoid striking another vehicle;
- j. In failing to apply the brakes properly on their vehicles so as to bring the vehicles to a stop before colliding with another vehicle;
- k. In operating their vehicles in a reckless and careless manner under the circumstances;
- l. In being overly aggressive;
- m. In driving while intoxicated; and
- n. Any and all other acts of negligence, fault, or want of care which may be proven at the trial of this case; all of which said acts or omissions are in violation of the traffic

laws or ordinances for the Parish of Orleans and/or State of Louisiana, and which are
pled herein as if copied in extenso.

8.

That because of the negligence as enumerated in Paragraph 7 above, defendants, Hayes, USAA, Smith, and Fireman's Fund, are liable unto Hernandez for his mental and physical pain and suffering, physical disability, medical expenses, loss of enjoyment of life, intentional infliction of emotional distress, exemplary damages, and/or any and all other damages, for an amount reasonable in the premises.

9.

The amount in controversy is more than \$50,000.00, exclusive of interest and costs.

10.

That at all times relevant herein, USAA issued a policy of liability insurance and other coverages providing coverage to Hayes for the accident and damages sued on herein and that said policy was in full force and effect at the time of the accident sued on herein.

11.

That at all times relevant herein, Fireman's Fund issued a policy of liability insurance and other coverages providing coverage to William Smith for the accident and damages sued on herein and that said policy was in full force and effect at the time of the accident sued on herein.

12.

That just demand has been made upon defendants to no avail.

WHEREFORE, plaintiff prays that the defendants be served with a copy of this Petition and cited to appear and answer same and that, after all due proceedings had, there be judgment herein in favor of plaintiff and against defendants, jointly, severally, and in solido, together with legal interest from the date of judicial demand until paid, and for all costs of these proceedings, expert fees, and for any and all equitable relief as plaintiff is entitled under this cause, equity, justice, or as a matter of law.

Request for Notice

In accordance with LSA-CCP art. 1572, Plaintiff(s) herein request(s) that this Honorable Court give written notice at least ten (10) days in advance of the date fixed for trial or hearing of this case whether on exceptions, motions, rules, or the merits.

Plaintiff(s) further request(s) immediate notice of all orders or judgments, whether interlocutory or final, made or rendered in this case upon the rendition thereof as provided by LSA-C.C.P. arts. 1913 and 1914, including Notice of Judgment in the event this case is taken under advisement or if the Judgment is not signed at the conclusion of the trial.

Notice is to be mailed or served on the above-named Plaintiff(s) through undersigned counsel.

Respectfully submitted:

RIGUER SILVA, L.L.C.



IVAN A. ORIHUELA (LSBN 23542)

**3213 Florida Avenue
Suite C**

Kenner, Louisiana 70065

Telephone: (504) 466-7507

Facsimile: (504) 466-7508

ATTORNEY FOR RICHARD HERNANDEZ

PLEASE SERVE:

CARDELL HAYES

Inmate No.: 1534100

ORLEANS JUSTICE CENTER

2800 Gravier Street

New Orleans, Louisiana 70119

USAA CASUALTY INSURANCE COMPANY

Through the Louisiana Secretary of State

8585 Archives Avenue

Baton Rouge, Louisiana 70809

**RAQUEL SMITH, AS THE EXECUTOR OF THE ESTATE OF THE DECEASED
WILLIAM SMITH**

6 Oakland Road

Kenner, Louisiana 70065

FIREMAN'S FUND INSURANCE COMPANY

Through the Louisiana Secretary of State

8585 Archives Avenue

Baton Rouge, Louisiana 70809