

**FILE COPY**

**IN THE SUPERIOR COURT OF WHITFIELD COUNTY**

**STATE OF GEORGIA**

**VIRGINIA THURMAN, as surviving  
spouse and next-of-kin of WILLARD  
LEON THURMAN, and  
MELISSA MERCER, as Administratrix  
of the Estate of WILLARD LEON  
THURMAN,**

**Plaintiffs,**

**vs.**

**CITY OF VARNELL, GEORGIA,**

**Defendant**

**CIVIL ACTION FILE  
NO.: 12CL665-M**

**FILED  
WHITFIELD COUNTY, GA.  
2012 APR 26 AM 10:57  
Melica Kendrick  
CLERK OF SUPERIOR COURT**

**SUMMONS**

**TO THE ABOVE NAMED DEFENDANT: CITY OF VARNELL, GEORGIA**

You are hereby summoned and required to file with the Clerk of said Court and serve upon the Plaintiff's Attorney, whose name and address is:

Robert H. Smalley, III  
McCamy, Phillips, Tuggle & Fordham, LLP  
P.O. Box 1105  
Dalton, Georgia 30722-1105

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 26 day of April, 2012.

CLERK OF SUPERIOR COURT

*Melica Kendrick*  
MELICA KENDRICK

IN THE SUPERIOR COURT OF WHITFIELD COUNTY

STATE OF GEORGIA

VIRGINIA THURMAN, as surviving spouse and next-of-kin of WILLARD LEON THURMAN, and MELISSA MERCER, as Administratrix of the Estate of WILLARD LEON THURMAN,

Plaintiffs,

vs.

CITY OF VARNELL, GEORGIA,

Defendant.

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COMPLAINT FOR DAMAGES

COME NOW Virginia Thurman, as the surviving spouse and next-of-kin of Willard Leon Thurman, and Melissa Mercer, as putative Administratrix of the Estate of Willard Leon Thurman, and show the Court and Jury as follows for their causes of action:

PARTIES, JURISDICTION, AND VENUE

Plaintiff Virginia Thurman, as the surviving spouse and next-of-kin of Willard Leon Thurman, is a Whitfield County resident and is a resident at 354 Wolfe Street, Cohutta, Georgia. Plaintiff Melissa Mercer, the daughter of the decedent, has duly petitioned, with consent of all heirs, to be appointed the Administratrix of the Estate of Willard Leon Thurman and is expected to be sworn in as Administratrix on or about

May 8, 2012. Plaintiffs submit themselves to the personal jurisdiction and venue of this honorable court by this filing.

-2-

Defendant Varnell, Georgia (hereinafter "Varnell,") is a municipal local government, organized and existing under the laws of the State of Georgia, and is subject to suit, as set forth hereinafter, and it may be served with a copy of the complaint and summons by service upon the Honorable Dan Peeples, Mayor of Varnell. Personal jurisdiction and venue are proper in this court.

### FACTUAL ALLEGATIONS

-3-

At all times material to the claims in this lawsuit, Varnell has maintained membership in the Georgia Interlocal Risk Management Agency (GIRMA,) which provides coverage, with single limits for each cause of action in the amount of seven hundred fifty thousand and no/100s dollars (\$750,000.00) for general liability for automobile liability claims.

-4-

Varnell has accordingly waived its sovereign and official immunity for the claims set forth hereinafter, to the extent of its coverage through GIRMA, as provided by **OCGA §36-92-2(d)(2,)** and case law interpreting such statutory provisions.

-5-

Pursuant to **OCGA § 36-33-5**. *Ante Litem* Notice was provided to Varnell by letter dated March 19, 2012, within six (6) months of the happening of the event, as a statutory condition precedent to the filing of this lawsuit.

-6-

On March 5, 2012, at approximately 1:34 a.m., Officer James Smith (“Officer Smith”) of the Varnell Police Department, while on duty and while driving a Varnell Police cruiser, was traveling in a northerly direction on the Cleveland Highway, also known as State Route 71, within Whitfield County. Upon information and belief, at such time, Officer Smith was not responding to any call.

-7-

At all times covered by the allegations relevant to the claims in this lawsuit, Officer Smith was acting within the course and scope of his employment and duties as a Varnell police officer, including at the time of the collision that forms the basis of this action.

-8-

At the time of this collision, Officer Smith was operating neither his emergency siren or blue lights, and was therefore not entitled to exceed the posted speed limit or violate any other rule of the road, as provided by **OCGA § 40-6-6(c.)**

-9-

Pursuant to the Varnell Police Department’s policies and procedures in place at the time of this incident, Officer Smith was not entitled to exceed the posted speed limit or violate any other rule of the road.

-10-

Officer Smith, in reckless, negligent, careless, and flagrant disregard of Georgia law and further in disregard of the Varnell Police Department’s policies and procedures, operated his vehicle immediately preceding this collision at speeds of more than twice the posted speed limit of forty-five miles per hour, and collided with Willard Leon

Thurman's vehicle at approximately the intersection of the Cleveland Highway and a cross road known as Orchard Way.

-11-

As a direct and proximate result of the violent collision described herein, Willard Leon Thurman was ejected from his vehicle, which exploded in fire. Willard Leon Thurman suffered blunt trauma and serious bodily injuries which resulted in his death.

-12-

Varnell, acting via its responsible agents and employees within the Varnell Police Department, failed properly to implement its policies and procedures, including providing proper training and supervision of its officers, such as Officer Smith, and failed to ensure that he complied with all policies and procedures relating to the use of the motor vehicle assigned to him by the Varnell Police Department.

-13-

There is no *bona fide* dispute as to Defendant's liability for the violent collision that resulted in the wrongful death of Willard Leon Thurman, or as to the violations of written and mandatory policies and procedures that were flagrantly violated by Officer Smith at the time of this collision.

-14-

In the event Defendant denies liability, or otherwise causes Plaintiffs unnecessary trouble and expenses concerning this litigation, Plaintiffs provide notice that they will seek their expenses of litigation, including reasonable attorney's fees and costs, etc., pursuant to provisions of Georgia law, including **OCGA §13-6-11** and **§9-15-14**.

-15-

Plaintiff Virginia Thurman brings this claim for the wrongful death of Willard Leon Thurman, and seeks recovery for the full value of his life, as provided by Georgia law.

-16-

Melissa Mercer, as Administratrix of the Estate of Willard Leon Thurman, brings this claim on behalf of his Estate for all pre-death pain and suffering, apprehension of death, shock, funeral expenses, burial expenses, and property damage.

**PRAYER FOR RELIEF**

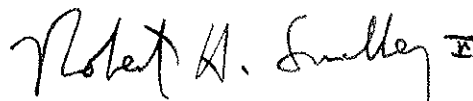
**WHEREFORE**, Plaintiffs demand judgment and pray for the following relief:

- a) That service of process issue, and that Defendant be properly served with Plaintiffs' Complaint and Summons;
- b) That Virginia Thurman, as surviving spouse and next-of-kin, have judgment against Defendant for all claims plead in this Complaint above in an amount not less than the maximum recovery allowed pursuant to Georgia law or SEVEN HUNDRED FIFTY THOUSAND and no/100s DOLLARS, whichever is greater, or such other amount, as determined by a jury in its fair and enlightened conscience that will fully and adequately compensate Plaintiffs for the wrongful death of Willard Leon Thurman, including, but not limited to, the full value of his life;
- c) That Melissa Mercer, in her representative capacity on behalf of the Estate of Willard Leon Thurman, recover any general and special damages that the Estate is entitled to recover under general law in an amount to be determined by a jury in its fair and enlightened conscience at the trial of this case.

- d) That this Court grant such other equitable and further relief as it deems just and proper in this circumstance; and
- e) Plaintiffs hereby demand a trial by Jury upon all issues and claims plead in this action, any defenses raised by Defendant, and all claims that may be plead by amendment hereto.

Respectfully submitted, this 26<sup>th</sup> day of April, 2012.

**MCCAMY, PHILLIPS, TUGGLE & FORDHAM, LLP**



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**Robert H. Smalley, III**

Ga. Bar No. 653405

**Samuel L. Sanders**

Ga. Bar No. 140865

Attorneys for Plaintiffs

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