ERIC HUDSON : NUMBER: 547,165

VERSUS : FIRST JUDICIAL DISTRICT COURT

KENNETH CRAWFORD AND

IMPERIAL FIRE AND CASUALTY

INSURANCE COMPANY, IN SOLIDO : CADDO PARISH, LOUISIANA

CONSOLIDATED WITH

DEMARCUS D. HUDSON : NUMBER: 549,946

VERSUS : FIRST JUDICIAL DISTRICT COURT

KENNETH CRAWFORD AND

IMPERIAL FIRE AND CASUALTY

INSURANCE COMPANY, IN SOLIDO : CADDO PARISH, LOUISIANA

**REASONS FOR JUDGMENT**

 Trial of this consolidated case was held on June 22, 2011. The Court heard testimony from DeMarcus Hudson, Eric Hudson and Kenneth Crawford. Numerous exhibits were admitted into evidence, including the medical records of DeMarcus Hudson, photographs and appraisals of the subject vehicle.

 At the conclusion of evidence, the Court ruled that the rear-end collision of December 1, 2010 was the fault of Kenneth Crawford and concluded liability of Mr. Crawford’s insurer, Imperial Fire and Casualty Insurance Company. The issue of quantum was argued and submitted for decision. After thorough review of the evidence and for reasons which follow, the Court sets Eric Hudson’s property damage in the amount of $2,950.00; DeMarcus Hudson’s special damages in the amount of $7,092.33; and general damages in the amount of $8,000.00.

**PROPERTY DAMAGES OF ERIC HUDSON**

 As set forth in the Joint Pre-Trial Order, the applicable law is as follows:

A car is deemed to be a total loss when the cost of repairing it exceeds its pre-accident value. [*Snow v. Mid-American Indem. Co.,* 557 So.2d 1073 (La.App. 2d Cir.1990)](https://web2.westlaw.com/find/default.wl?serialnum=1990044152&tc=-1&rp=%2ffind%2fdefault.wl&sv=Split&utid=1&rs=WLW11.04&db=735&tf=-1&findtype=Y&fn=_top&mt=Louisiana&vr=2.0&pbc=8A41C551&ordoc=1992187043)

 The correct measure of damages for a total loss vehicle is average cash value (ACV). ACV is defined by the courts as the amount a willing buyer would pay a willing seller in a retail setting, as generally reflected in the national automobile buying guides: NADA and Kelley Blue Book.

Whether a NADA Guide or a Kelley Blue Book valuation is superior to another calculation is a question of fact that must be examined on a case-by-case basis. Although the Louisiana Supreme Court noted the “industry-wide” use of the NADA Guide in [*State Farm Mut. Auto Ins. Co. v. Berthelot,* 98-1011 (La.4/13/99), 732 So.2d 1230,](https://web2.westlaw.com/find/default.wl?serialnum=1999101327&tc=-1&rp=%2ffind%2fdefault.wl&sv=Split&utid=1&rs=WLW11.04&db=735&tf=-1&findtype=Y&fn=_top&mt=Louisiana&vr=2.0&pbc=552DCA04&ordoc=2004503594) this court, in [*Hayes v. Allstate Ins. Co.,* 99-1558 (La.App. 3 Cir. 3/1/00), 758 So.2d 900,](https://web2.westlaw.com/find/default.wl?serialnum=2000065908&tc=-1&rp=%2ffind%2fdefault.wl&sv=Split&utid=1&rs=WLW11.04&db=735&tf=-1&findtype=Y&fn=_top&mt=Louisiana&vr=2.0&pbc=552DCA04&ordoc=2004503594) *writ denied,* [00-1587 (La.8/31/00), 766 So.2d 1280,](https://web2.westlaw.com/find/default.wl?tc=-1&docname=766SO2D1280&rp=%2ffind%2fdefault.wl&sv=Split&utid=1&rs=WLW11.04&db=735&tf=-1&findtype=Y&fn=_top&mt=Louisiana&vr=2.0&pbc=552DCA04&ordoc=2004503594) held that a trial court is not always required to use the NADA Guide value. This court also noted with interest:

[La.R.S. 32:702](https://web2.westlaw.com/find/default.wl?tc=-1&docname=LARS32%3a702&rp=%2ffind%2fdefault.wl&sv=Split&utid=1&rs=WLW11.04&db=1000011&tf=-1&findtype=L&fn=_top&mt=Louisiana&vr=2.0&pbc=552DCA04&ordoc=2004503594)(11), located within the Chapter entitled “Vehicle Certificate of Title Law” provides that “The term ‘total loss' means a motor vehicle which has sustained damages equivalent to seventy-five percent or more of the market value as determined by the most current National Automobile Dealers Association Handbook.”

*Id.* at 904.

Additionally, other circuits have supported the contention that the valuation method used by the trial court is a question of fact. [*Bonner v. Louisiana Indem. Co.,* 607 So.2d 915 (La.App. 2 Cir.1992)](https://web2.westlaw.com/find/default.wl?serialnum=1992187043&tc=-1&rp=%2ffind%2fdefault.wl&sv=Split&utid=1&rs=WLW11.04&db=735&tf=-1&findtype=Y&fn=_top&mt=Louisiana&vr=2.0&pbc=552DCA04&ordoc=2004503594), (accepting a valuation made without using the NADA Guide); [*Brown v. Morgan,* 449 So.2d 606 (La.App. 1 Cir.1984)](https://web2.westlaw.com/find/default.wl?serialnum=1984118286&tc=-1&rp=%2ffind%2fdefault.wl&sv=Split&utid=1&rs=WLW11.04&db=735&tf=-1&findtype=Y&fn=_top&mt=Louisiana&vr=2.0&pbc=552DCA04&ordoc=2004503594), (accepting a valuation higher than the NADA Guide); [*Usand v. New Orleans Pub. Serv., Inc.,* 438 So.2d 258 (La.App. 4 Cir.1983)](https://web2.westlaw.com/find/default.wl?serialnum=1983145151&tc=-1&rp=%2ffind%2fdefault.wl&sv=Split&utid=1&rs=WLW11.04&db=735&tf=-1&findtype=Y&fn=_top&mt=Louisiana&vr=2.0&pbc=552DCA04&ordoc=2004503594), (adjusting the value given by the NADA Guide).

*Clark v. McNabb*, No. 2004-0005 (La. 3 Cir. 5/19/04); 878 So.2d 677.

 The Kelley Blue Book and the NADA Blue Book are market reports that are widely used and relied upon by the public, and hence, are admissible into evidence and may be used by a court in determining the value of a vehicle. See *State v. Batiste*, 99-1481, p. 4 (La.App. 1st Cir. 3/31/00), 764 So.2d 1038, 1040, writ denied. 20001648 (La. 6/22/01), 794 So.2d 778; *Neloms v. Empire Fire & Marine Ins. Co*., 37,786, pp. 11-12 (La.App. 2nd Cir. 10/16/03), 859 So.2d 225, 232. As cited in *Oaties v, Warner*, 2006 0738 (La.App. 1 Cir. 6/8/07); 958 So.2d 1220.

 In this case the NADA value for a similarly equipped vehicle in average condition is $3,300.00. The parties have stipulated that the salvage value is $350.00. In its appraisal (Imperial A in globo), Imperial made $1,000.00 in deductions.

 As set forth by the jurisprudence, the valuation method utilized by the trial court is a question of fact and, based on the particular circumstances of each case, the court may adjust the NADA value upward or downward. The automobile valuation issue in this case is unique. Eric Hudson testified of the cost he expended on the car and further testified of the labor he and his son DeMarcus put into getting the vehicle up and running. It was a laborious project for this father and son – as well as a source of pride in having successfully and inexpensively achieved a good, operable vehicle (with a stereo system). Again, the NADA value for a similarly equipped vehicle in average condition – including minor dents and scrapes typical for a 15 year old car – is $3,500.00. Given the particular circumstances of this case, this Court concludes that the value of this vehicle should be set in the amount of $2,950.00.

**PERSONAL DAMAGES OF DEMARCUS HUDSON**

 On the issue of damages, the Court heard testimony from Eric Hudson, a former marine and businessman, DeMarcus Hudson, a college student taking 12 hours who is employed at UPS and works part-time for his father. The Court also received the detailed medical records reflecting, among other things, that DeMarcus received physical therapy for a total of 27 visits over two months (about 3 physical therapy treatments per week). Despite pain in December 2010 and January 2011, DeMarcus continued to work at UPS, a physically demanding job, and continued to attend college. He did not miss any of the 27 scheduled physical therapy appointments and in February 2010 stated that his pain had completed resolved.

 The Court sets special damages in the amount of $7,092.33. The Court sets general damages in the amount of $8,000.00 noting the severity of the impact (which was forceful enough to bend the vehicle frame), the fastidious nature in which DeMarcus dedicated himself to resolving his pain while continuing to work a physically demanding job and the credibility of both Eric and DeMarcus. Again, the assignment of general damages by the Court is always based on the facts, evidence and applicable law and while this assessment is higher than normal for this judge, it is warranted under the particular facts of this case.

 A formal Judgment consistent with this ruling shall be submitted in accordance with La. Dist. Ct. R. 9.5

 Signed this 23rd day of June, 2011 in Shreveport, Caddo Parish, Louisiana.

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 SCOTT J. CRICHTON

 DISTRICT JUDGE

DISTRIBUTION:

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