

**CASE INFORMATION SHEET**  
**FLORIDA LEGAL PERIODICALS, INC.**  
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**COUNTY AND COURT:**

Marion County Circuit Court

**NAME OF CASE:**

ELIEZER SOTO MALDONADO, SR., as the Duly appointed Florida Representative of the Estate of DEBORAH E. MALDONADO, Decedent, ELIEZER SOTO MALDONADO SR., as the Duly appointed Florida Representative of the Estate of ELIEZER SOTO MALDONADO, JR., Decedent, ELIEZER SOTO MALDONADO, SR., as the Next Friend of ANADELIZ MALDONADO, a minor, and FIRST CAPITAL SURETY & TRUST COMPANY, as Limited Guardian of the Property of ANA DELIZ MALDONADO, Ward,

Plaintiffs,

v.

THEORPHILUS CLARK, PEOPLEASE CORPORATION, a South Carolina Foreign Corporation and WAYNE T. FELLOWS, INC., a Florida Corporation,

Defendants.

**CASE DOCKET NO.:** 2013-1308-CA

**JUDGE:** Lisa Herndon

**PLAINTIFFS' ATTORNEYS/TRIAL COUNSEL:**

Marianne Howanitz  
Marianne Howanitz, P.A.  
118 W. Fort King Street  
Ocala, FL 34471

Jonathan P. Davis  
Ramsdell Law Firm, LLC  
1304 W. Battlefield Road  
Springfield, MO 65807

**DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL:**

Richard S. Womble  
Susan R. Fuller  
Rissman, Barrett, Hurt,  
Donahue, McLain and Mangan, P.A.  
201 East Pine Street  
Suite 1500  
Orlando, FL 32801  
Attorneys for Theorphilus Clark

Daniel J. Kissane  
Ryan K. Williams  
James T. Sparkman  
Cole, Scott & Kissane, P.A.  
4686 Sunbeam Road  
Jacksonville, FL 32257  
Attorneys for Wayne T. Fellows, Inc.

Griffith J. Winthrop  
Susan M. Seigle  
Alvarez, Winthrop, Thompson & Storey, P.A.  
3701 NW 40th Terrace  
Suite 2  
Gainesville, FL 32606  
Attorneys for PeopLease Corporation

**AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:**

Mr. Maldonado was a 34-year old male on the date of the incident. He was employed as a mechanical assembler with United Plastic Fabricating.

Anadeliz Maldonado - age 10 on the date of accident.

Deborah Maldonado (Decedent) - age 35 on the date of accident.

Eliezer Soto Maldonado Jr. (Decedent) - age 12 on the date of accident.

**FOR WRONGFUL DEATH CASES, PLEASE GIVE AGE AND RELATIONSHIP OF SURVIVORS:**

Eliezer Maldonado Soto, Sr. - Age 39 (Husband and Father)

Anadeliz Maldonado - Age 15 (Daughter and Sister)

**DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:**

December 2, 2012 at 2:38 a.m. on northbound I-75, approximately 1.50 miles north of CR 484 in Marion County, Florida.

**CAUSE OF INJURY:**

This motor vehicle negligence case revolved around a collision between a tractor-trailer and a disabled passenger vehicle, resulting in the death of a 35-year-old mother and her 12-year-old son. Plaintiffs' vehicle was initially struck from behind and disabled by a drunk driver who was named as a defendant, defaulted and dismissed from the case before trial. Three minutes later, a tractor-trailer, operated by the defendant truck driver under the control of the two co-employer corporations, struck plaintiffs' darkened vehicle causing the deaths instantaneously.

Plaintiffs contended that the defendant truck driver was tired and negligently failed to pay attention to the road in front of him. Defendants argued that the deaths were caused by the negligence of the drunk driver. The defense contended that the defendant truck driver could not see plaintiffs' unlit vehicle due to the darkness of the road conditions and the distraction caused by other motorists at the scene.

Evidence showed that the accidents occurred in the early morning hours of December 2, 2012, as the plaintiff family returned from a birthday celebration for the father in Orlando. The plaintiffs' Honda was disabled in the center lanes of northbound I-75 in Ocala after being struck by the drunk driver who fled the scene.

Plaintiffs contended that three minutes after the initial impact the defendant truck driver approached from the same direction and struck plaintiffs' car, pushing it some 1,400 feet north, causing it to catch fire and killing the plaintiff mother and son. The plaintiff father and 10-year-old daughter exited the disabled vehicle before the truck's collision with the vehicle. The plaintiff father and daughter survived the collision and witnessed the death of their family members. At trial, defendants maintained that evidence proved the mother and son were killed on impact and were not alive when the vehicles caught fire.

Testimony established that plaintiffs' companions, travelling in another vehicle, stopped at the scene and flashed headlights

toward northbound traffic in an attempt to warn the approaching truck of the presence of plaintiffs' disabled vehicle. Plaintiffs argued that medical records showed the defendant truck driver suffered from sleep apnea, reported to his doctor that he had previously fallen asleep while driving and evidence indicated he was tired on the morning of the fatal accident which is why he failed to heed the warnings. Plaintiffs contended that the defendant driver was operating the truck on cruise control and struck plaintiffs' vehicle at a speed of 70 mph.

Evidence introduced by the defense showed that the truck driver had driven his truck through a weight station three miles before the accident scene, requiring him to down-shift and up-shift the rig through nine gears during entering and exiting the weight station. Defendants argued that these actions established that the truck driver was not fatigued nor asleep at the time of the collision.

Defendants argued that the deaths were the direct cause of the actions of the drunk driver's fault who had a blood alcohol level of 0.218, impacted the rear of plaintiffs' Honda at a speed of 78 mph, forced it into the median guardrail and then fled the scene.

The defendant truck driver claimed he was distracted by witnesses' vehicles' headlights at the scene and could not avoid the subsequent impact with plaintiffs' darkened vehicle. The defense argued that photographic recreation of the accident scene demonstrated that an unlit vehicle in the road would not have been visible to the approaching truck driver especially in light of the distraction of lights flashing from the right shoulder of the road pointed directly southbound toward northbound traffic and not illuminating the disabled vehicle.

After a 12-day trial, the jury found the (defaulted) drunk driver 78% negligent and the defendant truck driver 22% negligent. Plaintiffs were awarded \$3,900,500 in gross damages. The award included \$1,400,500 to the plaintiff father and \$2,500,000 to the surviving daughter. The net award was \$858,000.

**NATURE OF INJURY:**

Death of a 35-year old mother and 12-year old son.

**PLAINTIFFS' EXPERT WITNESSES:**

Harold R. Linde, PsyD  
13701 Bruce B. Downs Blvd.  
Suite 103  
Tampa, FL 33613-4647

Clinical, Forensic and  
Rehabilitation Psychologist

Dr. Linde testified that Eliezer Maldonado, Sr. suffered from PTSD and depression as a result of the accident. He testified Mr. Maldonado was at risk for suicide, would have difficulty maintaining relationships and would seek a replacement child.

Lew Grill  
The Legacy Corporation  
3311 Ben Hogan Lane  
Billings, MT 59106

Trucking Industry Expert

Mr. Grill testified that Theophilus Clark and Wayne T. Fellows, Inc. did not comply with Federal Motor Carrier Safety (FMCS) Regulations and Commercial Driver License (CDL) Standards.

Nadia Webb, PsyD, MP  
1492 Middlebrook Road  
Staunton, VA 24401

Pediatric Neuropsychologist

Nadia Webb testified Anadeliz Maldonado suffers from PTSD, anxiety and depression. She has behavioral problems at school and will be likely to engage in risky behavior.

Robert Johnson  
Robert W. Johnson & Associates  
4984 El Camino Real, Suite 210  
Los Altos, CA 94022

Economist

Mr. Johnson prepared a life care plan in which he estimated the cost of future medical care and needs of Eliezer Maldonado, Sr. and Anadeliz Maldonado could reach \$4,397,366.

Ben Levitan  
4317 Worley Drive  
Raleigh, NC 27613

Cellular, Telephony and  
Wireless Consultant

Mr. Levitan testified that Mr. Clark's drivers' logs were falsified as they were inconsistent with his cell phone records.

Stefanos N. Kales, M.D.  
1493 Cambridge Street  
Cambridge, MA 02139

Doctor of Medicine

Dr. Kales testified Clark was not medically qualified to drive a commercial vehicle at the time of the accident as he was suffering from sleep apnea. He testified further that Clark failed to disclose his sleep apnea to the physician who qualified him to drive and that his erratic sleep pattern contributed to his fatigue.

Sarah Lustig, BSN, RN, CLCP  
Lustig Consulting, LLC  
410 Mill Street, Suite 101  
Mount Pleasant, SC 29464

Life Care Planner

Sara Lustig prepared a Life Care Plan in which she estimated the cost of Eliezer Maldonado, Sr.'s future medical care and needs due to the injuries could reach \$1,172,670 and the cost of Anadeliz Maldonado's future medical care and needs could reach \$1,220,394.

Robert J. Swint  
ATA Associates, Inc.  
1301 Gemini  
Houston, TX 77058

Accident Reconstructionist

Mr. Swint was offered as plaintiffs' rebuttal expert to Mr. Brill. He testified Clark's tractor-trailer could have swerved and avoided the accident.

**DEFENDANTS' EXPERT WITNESSES:**

David Brill  
Collision Analysis & Investigation  
2574 NW 49th Avenue  
Jennings, FL 32053

Accident Reconstruction

Mr. Brill reconstructed the accident and testified the accident was unavoidable at 50, 60 or 70 miles an hour.

William Neale, M.Arch  
VP, Director of Visualization  
Kineticorp  
6070 Greenwood Plaza Blvd.  
Suite 200  
Greenwood Village, CO 80111

Forensic Engineer

Mr. Neale created still images of the accident scene which showed what Mr. Clark would have seen five, four, three and two seconds from impact. The images demonstrated the Maldonado vehicle could not have been seen before it was too late to perceive the danger, react and avoid the collision.

**CHECK APPROPRIATE SPACE:**      X   Plaintiff Verdict

**DATE OF VERDICT:**

February 17, 2017

**NEGLIGENCE:**

78% - Fabre defendant Lanessa Riobe  
22% - Theorphilus Clark

**JUDGMENT:**

Pending.

**DATE OF JUDGMENT:**

Pending.

**DEFENDANTS' OFFER:**

Defendants offered to settle in the amount of \$1,000,000 (policy limits) a week after the December 2, 2012 accident. Three days before trial, the defense offered \$1,200,000.

**PLAINTIFFS' DEMAND:**

Plaintiffs served a proposal for settlement to each defendant for \$51,202,127 for a total of \$153,606,381.

**ATTORNEY'S COMMENTS:**

Judge Herndon directed a verdict on plaintiffs' claims for negligent infliction of emotional distress and plaintiffs voluntarily dismissed their counts of direct negligence against Wayne T. Fellows, Inc. and PeopLease. Consequently, defendants, as the prevailing party on those claims, are seeking costs pursuant to § 57.041, **Fla. Stat.**, and the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions.

Submitted By: Susan R. Fuller

Date: March 10, 2017

Firm: Rissman, Barrett, Hurt,  
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