NO. 14-004687-CV

MADELYN FORTENBERRY	§	**IN THE 479th DISTRICT COURT**
	§	
Plaintiff,	§	
	§	**IN AND FOR**
	§	
v.	§	
	§	**DALLAS COUNTY**
THOMAS THOMPSON	§	
	§	
Defendant.	§	**STATE OF LONE STAR**

Prepared by:

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This case file was commissioned by the Texas Young Lawyers Association and was prepared by Marvin W. Jones for the 2016 National Trial Competition

NATIONAL TRIAL COMPETITION
MADELYN FORTENBERRY V. THOMAS THOMPSON

STATEMENT OF FACTS

This is a negligence case arising out of the death of Zeke Fortenberry as a result of a plane crash that occurred when a small single engine Piper Cygnet he was ferrying for a friend ran out of fuel during a flight from Kansas City, Missouri to Dallas, Lone Star. Fortenberry, an experienced pilot, contacted Fort Worth Air Route Traffic Control declaring an emergency due to engine failure. He was told to look for a private airfield 10 miles from his position belonging to BBQ magnate Thomas "T. Bone" Thompson. Because it was near midnight, the private field would not be visible from the air unless a pilot "keyed" his microphone, at which time the runway lights would illuminate. Fortenberry keyed his microphone, but no lights came on at the private strip. Because his altitude was insufficient to allow him to navigate to any other field, Fortenberry crashed on Thompson's South Fork Ranch. A subsequent NTSB investigation revealed that the plane's engine was capable of producing power at the time of the crash, but had run out of fuel. The investigation also revealed that the pilot's manual in the plane at the time of the crash was not the manual for the Piper Cygnet, and that the manual in the airplane incorrectly stated the fuel capacity. The investigation also showed that the Pilot Activated Lighting system on Thompson's ranch was inoperative at the time of the crash.

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PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE COURT:

COMES NOW, Plaintiff Madelyn Fortenberry and files this Original Complaint against Thomas Thompson.

I.
GENERAL ALLEGATIONS

1. This is an action for damages within the jurisdictional limits of this Court.

2. Madelyn Fortenberry is a resident of Dallas County, Lone Star.

3. Thomas Thompson is an individual who is a resident of Perdido County, Lone Star, whose address for service of process is 1 South Fork Ranch, Goliad, Lone Star.

4. On or about August 18, 2013, Zeke Fortenberry, a certified and licensed pilot, undertook to fly a Piper Cygnet aircraft from a city in a foreign state, to wit, Missouri, to a city in Lone Star. During the course of such flight, Mr. Fortenberry experienced a failure of the single engine on the high wing airplane.

5. At the time of the engine failure, Mr. Fortenberry was in proximity to a privately owned landing strip owned by Defendant Thomas Thompson. Due to conditions

of darkness, Mr. Fortenberry was unable to visually identify such landing strip. The landing strip was equipped with a pilot automated lighting system designed to automatically illuminate the lights on the landing strip when a pilot clicks his or her microphone a set number of times. Mr. Fortenberry attempted to activate the pilot automated lighting system by clicking his microphone the specified number of times, but the lights on the airstrip did not illuminate, and Fortenberry was not able to visually identify the landing strip.

6. As a result of his inability to identify and utilize Defendant's runway, Mr. Fortenberry attempted to land his aircraft in what appeared to him to be a pasture. Such attempt failed, and Mr. Fortenberry fatally crashed his airplane on the ranch belonging to Defendant.

7. Defendant Thomas Thompson, as owner of a private airstrip, owed a duty to the flying public to properly maintain the pilot automated lighting system on his airstrip. At the time of the accident, the pilot automated lighting system was not operating due to poor maintenance.

II.
COUNT 1 – NEGLIGENCE

8. Plaintiff incorporates by reference the allegations of paragraphs 1 through 5 as if fully restated herein.

9. Defendant Thomas Thompson owed a duty to the flying public to properly maintain the pilot automated lighting system on the privately owned runway on his ranch. Defendant failed to act as a reasonably prudent person by failing to adequately and properly maintain such system. Such failure was negligence on the part of Defendant, which negligence was a proximate cause of Fortenberry's

accident and his death. Plaintiff, as Mr. Fortenberry's wife, has been damaged by such negligence. Such damages include loss of society and companionship, loss of consortium, grief, mental anguish, and loss of future earnings.

III.
JURY DEMAND

10. Plaintiff hereby requests trial by jury.

IV.
PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Defendant be cited to answer and appear, and that upon final hearing the Plaintiff have judgment for damages, pre-judgment and post-judgment interest as allowed by law, costs of suit and such other and further relief, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully Submitted,

Law Offices of Tracy Leduc
2204 Flinty Steel Parkway
P.O. Box 1950
Armadillo, Lone Star 76377-1950
(214) WILL SUE (Telephone)
(214) 945-5788 (Facsimile)

By: __/s/ Tracy Leduc_(electronically filed)_____
Tracy Leduc
Lone Star State Bar No. 1075896324

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	§	
Plaintiff,	§	
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v.	§	
	§	**DALLAS COUNTY**
THOMAS THOMPSON	§	
	§	
Defendant.	§	**STATE OF LONE STAR**

DEFENDANT'S ORIGINAL ANSWER

TO THE HONORABLE COURT:

COMES NOW, Defendant Thomas Thompson and files this Original Answer in response to the Original Complaint filed by Plaintiff.

I.
ANSWER TO PLAINTIFF'S ALLEGATIONS

1. Defendant admits the allegations contained in Paragraph 1 of Plaintiff's Original Complaint.
2. Defendant admits the allegations contained in Paragraph 2 of Plaintiff's Original Complaint.
3. Defendant admits the allegations contained in Paragraph 3 of Plaintiff's Original Complaint.
4. Defendant admits the allegations contained in Paragraph 4 of Plaintiff's Original Complaint.
5. Defendant is without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 5 of Plaintiff's Original Complaint, and therefore denies same.

6. Defendant is without knowledge or information sufficient to either admit or deny the allegations contained in Paragraph 6 of Plaintiff's Original Complaint, and therefore denies same.
7. Defendant denies the allegations contained in Paragraph 7 of Plaintiff's Original Complaint.
8. To the extent necessary, Defendant denies the allegations contained in Paragraph 8 of Plaintiff's Original Complaint.
9. Defendant denies the allegations contained in Paragraph 9 of Plaintiff's Original Complaint.
10. Defendant welcomes a trial by jury and accordingly independently demands a trial by jury.
11. Defendant denies the allegations contained in the "Prayer" of Plaintiff's Original Complaint.

II.
AFFIRMATIVE DEFENSES

12. Without waiver of the foregoing but in addition thereto, Defendant invokes the affirmative defense of comparative negligence. Plaintiff's decedent was negligent in his operation of the aircraft in question because he failed to properly calculate the amount of fuel required for the trip intended, as required by FAA regulations. Such failure to properly calculate the fuel needed for his intended trip was the proximate cause of the engine failure and ensuing crash and death of Mr. Fortenberry.
13. Without waiver of the foregoing but in addition thereto, Defendant alleges that the accident in question and Mr. Fortenberry's death were caused in whole or in part by the acts of a third party, specifically the failure of Piper Aircraft and Machine Parts, Inc. to include the correct operating manual in the aircraft in question. The manual found in the crashed

aircraft incorrectly listed the amount of total fuel capacity, indicating a fuel capacity greater than the fuel capacity of the model operated by Mr. Fortenberry. Such incorrect information was a proximate cause of the engine failure in question and of Fortenberry's death.

III.
PRAYER

WHEREFORE, Defendant requests that upon final trial that Defendant have judgment that Plaintiff take nothing by her suit, that Defendant be discharged from any and all liability, that Defendant recover court costs and for such other and further relief, at law or in equity, general or special, to which Defendant may show himself justly entitled.

Respectfully submitted,

LAW OFFICES OF CHARLES RICHARD
150 E. Middle Way
P.O. Box 15008
Armadillo, Lone Star 76707
(512) 831-7364
(512) 832-2628 FAX

By: /s/ [electronically signed and filed]
Charles "Chuck" Richard
State Bar No. 1588324

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Original Answer has been served by certified mail, return receipt requested, to Tracy Leduc on this 1st day of August, 2014.

By: /s/ [electronically signed]
Charles "Chuck" Richard

WITNESS AND EXHIBIT LIST

WITNESSES:

PLAINTIFF:

1. Alex Bell (may be male or female)
2. Sam Williams (may be male or female)

DEFENDANT:

1. Thomas Thompson (must be male)
2. Kim Bates (may be male or female)

EXHIBITS:

1. NTSB Investigation Report
2. Specifications for Piper Cygnet Series
3. Specifications for Piper Skymobile Series
4. Email from T. Bone Thompson to C. Barrett Thomas
5. Photo of crashed plane
6. Photo of lighted landing strip at South Fork Ranch
7. FAR Section 91.167: Calculation of Fuel
8. FAA Specification L-854: Automatic Runway Lighting Systems/Emergency Lighting Requirements
9. Transcript of conversation between Fortenberry and Regional Control
10. Weather Report: NOAA
11. Weather Report: Local TV Station
12. Email from T. Bone Thompson to C. Barrett Thomas
13. Handwritten fuel calculations

14. Photograph of Zeke and Madelyn Fortenberry

STIPULATIONS AS TO EVIDENTIARY MATTERS
Procedural Matters

1. Federal Rules of Civil Procedure and Federal Rules of Evidence apply.

2. All witnesses called to testify who have identified the parties, other individuals, or tangible evidence in depositions or prior testimony will, if asked, identify the same at trial.

3. Each witness who gave a deposition agreed under oath at the outset of his or her deposition to give a full and complete description of all material events that occurred and to correct the deposition for inaccuracies and completeness before signing the deposition.

4. All depositions were signed under oath.

5. For this competition, no team is permitted to attempt to impeach a witness by arguing to the jury that a signature appearing on a deposition does not comport with signatures or initials located on an exhibit.

6. Other than what is supplied in the problem itself, there is nothing exceptional or unusual about the background information of any of the witnesses that would bolster or detract from their credibility.

7. This competition does not permit a listed witness, while testifying, to "invent" an individual not mentioned in this problem and have testimony or evidence offered to the court or jury from that "invented" individual.

8. "Beyond the record" shall not be entertained as an objection. Rather, teams shall use cross-examination as to inferences from material facts pursuant to

National Rules VII(4) NTC National 2014 Revised - Page 12 VIII(5). Any party wishing to file a complaint concerning a violation of this rule shall use the procedure found in Rule VIII(4).

9. The Plaintiff and the Defendant must call the two witnesses listed as that party's witnesses on the witness list.

10. All exhibits in the file are authentic. In addition, each exhibit contained in the file is the original of that document unless otherwise noted on the exhibit or as established by the evidence.

11. It is stipulated that no one shall attempt to contact the problem drafter about this problem before the conclusion of the 2016 National Trial Competition Final Round. Contact with the competition officials concerning this problem must be pursuant to the rules of the competition.

12. 2016 is the year in which this case comes to trial.

13. Presentation and argument on pretrial motions shall be limited to a total time of sixteen minutes divided equally between the parties as follows: (1) the Plaintiff shall have four minutes to present any pretrial motions; (2) the Defendant shall have four minutes to respond to the Plaintiff's motion(s); (3) the Defendant shall have four minutes to present any pretrial motions; and (4) the Plaintiff shall have four minutes to respond to the Defendant's motion(s).

14. This competition permits teams to argue additional case law and other relevant authority to support the team's argument on motions and evidentiary issues. However, no additions or deletions are permitted to the provided jury instructions or to the jury verdict form.

Substantive Matters

1. Lone Star Civil Remedies Code Section 69.082 provides as follows:

> DESIGNATION OF RESPONSIBLE THIRD PARTY. (a) A defendant may seek to designate a person as a responsible third party by filing a motion for leave to designate that person as a responsible third party. The motion must be filed on or before the 60th day before the trial date unless the court finds good cause to allow the motion to be filed at a later date.
>
> (b) By granting a motion for leave to designate a person as a responsible third party, the person named in the motion is designated as a responsible third party for purposes of this chapter without further action by the court or any party.
>
> (c) The trier of fact, as to each cause of action asserted, shall determine the percentage of responsibility, stated in whole numbers, for the following persons with respect to each person's causing or contributing to cause in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these:
>
> (1) each claimant;
> (2) each defendant;
> (3) each responsible third party who has been designated under this Section.

2. The Court granted Defendant's motion to designate Piper Aircraft and Machine Parts, Inc. as a responsible third party. Therefore, Piper Aircraft and Machine Parts, Inc. was properly designated as a responsible third party pursuant to Lone Star Civil Remedies Code Section 69.082.

3. Plaintiff's motion to deem violations, if any, of FAR Section 91.167 and FAA Specification L-854 to be negligence per se has been denied by the Court and no further motions in that respect will be entertained.

4. Exhibits 1, 9 and 10 are records maintained by government entities as part of their statutory responsibilities and are admissible pursuant to Fed. R. Evid. Rule 803(8).

5. The Court has judicially determined that the straight line distance between MCI in Missouri and DFW in Lone Star, is exactly 480 miles.

DEPOSITION OF ALEX BELL
NOVEMBER 19, 2014

Q: Please state your name for the record?

A: My name is Alex Bell.

Q: Where do you reside, Mr. Bell?

A: I reside in Crawford, Lone Star.

Q: Crawford?

A: Yes, you know, a little town near Waco. Our mascot was the crawfish. Crawford Crawfish. Very intimidating.

Q: Did you graduate from Crawford High School?

A: Yes, and I then went to University of Lone Star, down in Austin.

Q: Did you get a degree there?

A: Yes, I got a degree in Aeronautical Engineering. Then went on to Lone Star A&M, and got a Master's degree in Art History.

Q: Were you employed anywhere after college?

A: Yes, my first job after college was working for an airplane manufacturer in Seattle, Washington as an avionics design coordinator.

Q: What does an avionics design coordinator do?

A: An avionics design coordinator helps determine where the instruments ought to be placed in a cockpit in order to maximize a pilot's ability to see and understand necessary information as quickly as possible.

Q: How long did you work at that job?

A: I worked there for 3 years, 6 months and 8 days.

Q: Why did you quit that job?

A: I thought the job was way below my skill set, and I wanted more responsibility, recognition and money.

Q: Where did you go next?

A: I went to work for the National Transportation Safety Board.

Q: What was your job for in NTSB?

A: I helped decipher information from avionics systems following crashes.

Q: How were you able to ascertain information about the avionics in an aircraft after a crash?

A: Black box. Or today, black boxes. More than the one. And orange.

Q: What is the function of a black box?

A: They record data from the aircraft's systems, both the mechanical and electrical systems.

Q: How long did you work for the NTSB?

A: I worked there for 10 years, 4 months and 27 days.

Q: How can you be so precise about the time that you worked at these 2 employments?

A: I was in art history.

Q: O.K. Where did you go after quitting your job at NTSB?

A: I went to work for the Federal Aviation Administration as an air traffic controller, the job in which I am currently employed.

Q: What are your responsibilities as an air traffic controller for the FAA?

A: My responsibilities include identifying aircraft that are in the air in our region, communicating with those aircraft concerning various issues, and making sure that the aircraft stay in the air where they should be and get to the ground when they want to.

Q: Is there a particular place that you work as an air traffic controller?

A: Yes, I work at the Fort Worth Regional Air Route Traffic Control Center.

Q: Were you working as an air traffic controller on the night of August 18, 2013?

A: Yes, I was working there that evening in order to help a friend out who needed some time off. My usual hours are 7:00 a.m. to 4:00 p.m.

Q: What time did you start the shift on August 18th?

A: I started my shift at 7:00 a.m., and then I started that shift at 4:00 p.m.

Q: And how long was the shift going to last?

A: That shift lasted until midnight.

Q: During the course of the evening on August 18, 2013, did you have an opportunity to speak with a pilot named Zeke Fortenberry?

A: Yes, I communicated with Mr. Fortenberry beginning at 11:22 p.m.

Q: How did you get to be in communication with Mr. Fortenberry at 11:22 p.m.?

A: Mr. Fortenberry called air traffic control and declared an emergency.

Q: Did he specifically describe the emergency that he was declaring?

A: Yes, Mr. Fortenberry said that his single engine aircraft had lost all power. At that time, he was not utilizing his transponder, so I asked him to turn on his transponder and to squawk 4500 so I could spot him on radar.

Q: And did he comply with those instructions?

A: Yes, I was immediately able to determine exactly where Mr. Fortenberry was located at that point.

Q: Where was Mr. Fortenberry located at that point?

A: He was 55.7 miles northwest of Fort Worth Air Route Traffic Control Center, which put him over a very unpopulated area, frankly too close to Oklahoma for comfort.

Q: After locating Mr. Fortenberry on your radar, what did you do?

A: I began questioning him about the specifics of his situation. I asked him first what his altitude and airspeed was.

Q: What did he tell you?

A: Mr. Fortenberry indicated that he was flying at 3,000 feet above sea level and had dropped his airspeed to 80 knots to conserve altitude.

Q: And how high above ground would he have been at that point?

A: Because the terrain in that area is rolling, it is hard to say, but generally the elevation of that area is around 500 feet, putting Mr. Fortenberry at 2,500 feet above ground level.

Q: What else did you ask Mr. Fortenberry?

A: I asked him what type of aircraft that he was flying.

Q: What did he tell you?

A: He told me was flying a Piper Cygnet, which is a single engine aircraft with a high wing configuration. It is a type of aircraft that can fly at a fairly low speed and the view of the ground is very good because of the high wing.

Q: After learning the aircraft type, what was your next communication?

A: I asked him what his fuel gauges were showing. On a plane like that, there should be two fuel gauges, one for the right tank and one for the left.

Q: And what was his response?

A: I actually asked that same question several times, but Mr. Fortenberry changed the subject every time and I never got an answer. I also asked him if he personally fueled the plane before takeoff.

Q: What did he say to that?

A: He said he did not. He was ferrying this plane for his friend Chris Jensen, and he said that Chris fueled the plane.

Q: What was your next communication with Mr. Fortenberry?

A: Well, based on where he was located and his relatively low altitude, I told him that there was no public airfield close enough for him to glide the aircraft to a good landing spot.

Q: How did Mr. Fortenberry respond to that?

A: He unleashed a string of words that we cannot repeat here, then he indicated that he was looking at his navigational app on an i-pad and saw that there was a private field within 5 miles or so of his location. He wanted to know what that private field was.

Q: Where you able to locate the private field yourself?

A: Yes, based on his location I noted that there was a private airstrip on a ranch called the South Fork Ranch and that it was approximately 10 miles from his location.

Q: What happened next?

A: I used my computer to determine whether the strip had a system called pilot activated lighting, which is simply a system that allows a pilot to fly over and click his microphone a certain number of times and that will turn on the runway lights so that he can see them and land.

Q: Would Mr. Fortenberry have been able to land on the South Fork runway without lights?

A: That would be very doubtful. It was a very dark night, there was no moon, and he was simply unfamiliar with the location and the terrain.

Q: What did you discover about whether South Fork Ranch had a PAL system?

A: My information indicated that South Fork Ranch had a Unicom and a PAL system, and I advised Mr. Fortenberry of that.

Q: What did Mr. Fortenberry say in response to that?

A: He said "I already figured that out looking at my iPad." Then he asked if I could tell him how many clicks that it took to activate the lights. Each system is set up for a certain number of clicks, 3, 5, or 7. I told him that those little private strips always use a 3 click system.

Q: What was the next thing that happened?

A: Mr. Fortenberry indicated that he had further reduced his air speed to preserve altitude and was circling and looking for any indication of a runway. He said that he was 3 clicking his microphone but getting no response.

Q: How long did this continue?

A: It was a good 5 minutes. He kept losing altitude, which he was reporting to me on a fairly constant basis. He was also uttering expletives on a fairly consent basis. He said that he was clicking away like a mad man, but no runway lights were to be seen.

Q: What was your last communication with Mr. Fortenberry?

A: Mr. Fortenberry reported that he was at 200 feet AGL, had never seen any runway lights, and was going to try to set the plane down in what appeared to be a pasture.

Q: Did you say anything to him in response to that?

A: Yes, I said "good luck, and we're all counting on you."

Q: What happened then?

A: Well, I had lost contact with the aircraft on radar when he got too low for me to see. And so it was not like there was some big dramatic blip on my radar or anything to indicate that he had put the plane on the ground. However, given his last report of his altitude and

intentions, when I did not hear from him for a couple of minutes, I ascertained that he must have had some difficulty trying to land.

Q: What did you do then?

A: I called my FAA supervisor and reported a probable plane down and the Civil Air Patrol commenced an immediate search.

Q: Did you take any part in the investigation of this accident?

A: The NTSB investigator quizzed me about my communications with Mr. Fortenberry, and later asked me to review the Investigation Report he had drafted because of my own experience with investigations.

Q: Can you identify Exhibit 1?

A: That's a true and correct copy of the NTSB Investigation Report regarding Mr. Fortenberry's accident.

Q: Does the report state a cause of the failure of Mr. Fortenberry's engine?

A: It says that the power plant, or engine, was capable of producing power at the time of the failure but for the lack of fuel.

Q: So he ran out of gas?

A: That's correct.

Q: Can you identify Exhibit 9?

A: That's a true and correct transcript of the conversation I had with Mr. Fortenberry on the night of his unfortunate crash.

Q: Have you told us every thing that you know or possibly could know, or may claim to know later about this event?

A: Yes.

DEPOSITION OF SAM WILLIAMS
NOVEMBER 17, 2014

Q: State your name, please?

A: Yes, My name is Sam Williams.

Q: Where do you live?

A: I live in Cut & Shoot, Lone Star.

Q: What is your occupation or profession?

A: I am a mechanical engineer with an accident reconstruction consulting practice.

Q: What is your background for that job?

A: Well, after I graduated from Cut & Shoot High School, I went to college out at Texas Technological and Agricultural College, where I got a decree in animal husbandry, with a minor in mechanical engineering. I then obtained a Master's degree in mechanical engineering from Rice University in Houston.

Q: What did you do after receiving your Master's degree from Rice?

A: I went to work for a private consulting firm whose business was designing highways, bridges and airport runways. I worked there for about 10 years, then I hired on with a private consulting firm that did accident reconstruction and investigation. I stayed there for another 10 years, then went out on my own as a consultant in the field of accident investigation.

Q: In your experience in accident reconstruction and in investigation, have you ever had an opportunity to investigate an accident involving an aircraft?

A: I have investigated approximately 18 aircraft accidents, all within the humble confines of the State of Lone Star.

Q: Have you been recognized in any Courts in the State of Lone Star as an expert witness?

A: Yes, I have testified at least 60 times in cases in which I have been recognized as an expert.

Q: Has your testimony ever been refused by a Court?

A: My testimony was refused by one Judge down in Refugio, but I think it was because I mispronounced the name of his town.

Q: Have we asked you to investigate the aircraft accident involving Mr. Zeke Fortenberry on August 18, 2013?

A: Yes, and in the course of doing that I have reviewed the NTSB Investigation Report, a transcript of a conversation between air traffic control and Mr. Fortenberry on the evening in question, the owner's manuals for both a Piper Cygnet and a Piper Skymobile, all of the photographs of the scene of the accident, some email correspondence between the owner of the South Fork Ranch and his ranch manager, a weather report from the National Oceanic and Atmospheric Administration, or NOAA, and a weather report from a local CBS affiliate television station for the day in question. And the depositions in this case, of course.

Q: Based on what you have reviewed and your extensive education and experience, did you reach any opinions as to the cause of the aircraft fatality involving Mr. Fortenberry?

A: Yes, I have formed several opinions. First, it is my expert opinion that T. Bone Thompson, owner of South Fort Ranch, had a duty to properly maintain the runway lights on his private runway if he was going to have a pilot assisted lighting system installed on that runway, and that his failure to properly maintain it was negligence. I am also of the opinion that Mr. Fortenberry acted reasonably under the circumstances and is not at fault

in connection with this accident. Finally, I am of the opinion that the manufacturer of the aircraft is not at fault in connection with the fatality.

Q: Taking up your first opinion first, what is the basis of your opinion that Mr. Thompson should have maintained the pilot activated lighting system on his runway?

A: Well, you should first recognize that the owner of a private airstrip is not required by law to own and install a PAL system on a private runway. However, if an owner accepts federal grant money to have a pilot activated lighted system installed on that airstrip, then the FAA requires certain things from the owner, including the responsibility to maintain and repair the system. It is therefore my opinion that Mr. Thompson owed a duty to properly maintain the system once he accepted federal grant money to install it.

Q: Can you identify Exhibit 8?

A: Yes, that is a copy of the Federal Aviation Administration's regulations regarding pilot activated lighting systems. As you can see, while it does not mandate that such a system be installed, it does indicate that any owner who accepts federal grant money in connection with his facility must comply with the FAA regulations. For example, the owner or operator of such a system is required to update the FAA anytime that the system is changed in anyway.

Q: In your opinion, did Mr. Thompson properly maintain the PAL system on his runway?

A: No, it is my opinion that he did not.

Q: What is that opinion based on?

A: My opinion in that regard is based on the fact that it didn't work. Beside from that obvious fact, my own inspection of the system revealed that it was not operative at the

time of the accident because the radio receiver, or Unicom, that operates the system was not working.

Q: Could you tell how long the system had been inoperable?

A: It was difficult to pinpoint an exact date when it became inoperative, but there is email correspondence between Mr. Thompson and his ranch manager that indicates that Mr. Thompson knew the system wasn't operating as many as 10 days prior to Mr. Fortenberry's fatal accident.

Q: Can you identify Exhibit 12?

A: Yes, Exhibit 12 is a copy of an email between T. Bone Thompson, the owner of South Fork Ranch, and his ranch manager C. Barrett Thomas regarding the operation of the PAL System.

Q: In your opinion, is 10 days an adequate time for a reasonably prudent person in Mr. Thompson's position to determine that the system was not working and to get that system fixed?

A: It is my opinion that a reasonably prudent owner of a system of this type would have the system repaired sooner than 10 days. Lives depend on this equipment.

Q: Now as to your second opinion, you indicated that you do not believe that Mr. Fortenberry was negligent in connection with the accident. What is that based on?

A: Mr. Fortenberry was a very seasoned and experienced pilot. He was flying this aircraft as a favor to a friend going from Kansas City, Missouri to Dallas, Lone Star. Just prior to take off, Mr. Fortenberry received a weather report from a local television station, which indicated that the winds in Dallas at that time were light to variable and from the north.

This is the type of information that a pilot will rely upon in making calculations concerning the amount of fuel needed for a flight.

Q: Can you identify Exhibit 11?

A: That's a true and correct copy of the 6:00 pm weather report from a local TV station, as posted on its website that evening for all to see.

Q: What does Exhibit 11 show regarding the winds at Dallas, Lone Star at that time of evening on the day of the accident?

A: The exhibit shows that winds were from the north north east at 10 mph.

Q: In your opinion, was the aircraft accident caused by fuel problems?

A: Yes, it is clear from the NTSB's report, a true and correct copy of which is Exhibit 1, that the engine of the airplane was capable of producing power after the accident but for the fact that there was no fuel in the lines or in the tanks. He ran out of gas.

Q: Then you're saying that he was not negligent in running out of gas in an aircraft flying at night?

A: That's right, he had obviously looked at the owner's manual in the aircraft, determined the fuel capacity, determined the trip's distance and his consumption of fuel per hour, and noted the amount of time it would take to reach his designation. While it would have been close, had the winds been as reported in Dallas, he would have been able to safely land there.

Q: So why wasn't he able to do so?

A: Apparently the winds were stronger than had been reported.

Q: Can you identify Exhibit 10?

A: Yes, Exhibit 10 is a report from the National Oceanic and Atmospheric Administration, or NOAA, indicating the winds aloft in the area of Dallas, Lone Star on the evening in question were actually from the due south at 22 to 25 knots, which would be 25 to 28 mph.

Q: Is this information Mr. Fortenberry would have access to and could have seen?

A: All pilots have access to this information, Mr. Fortenberry had already checked the weather with a reliable source, and was not obligated in my opinion to look at the NOAA data.

Q: What else is your opinion based on when you say that Mr. Fortenberry was not negligent in connection to this crash?

A: Once he ran out of fuel, his fate was pretty much determined. If he had been able to get the lights on at South Fork Ranch runway, he could have safely landed. Given the altitude, the conditions and the fact that he couldn't get the runway lights on, the crash was inevitable.

Q: And your third opinion is that the aircraft manufacturer was not negligent in connection with matter. What is that opinion based on?

A: While it has been implied that the wrong owner's manual was in the aircraft, it is not the aircraft's manufacturer's responsibility to make certain that the proper owner's manual is in the aircraft at all times. Further, the actual fuel capacity of that particular airplane was stamped on a plaque on the aircraft, and any difference between what the owner's manual said and what the plaque on the plane said would have to be resolved in favor of the plaque on the plane, particularly where it reports less capacity.

Q: Can you identify Exhibit 3?

A: Yes, that is the aircraft manual that was actually retrieved from the wrecked aircraft. As you can see, it is not the manual for the airplane that Fortenberry was flying at the time of the crash.

Q: And where is the fuel capacity plaque located on this particular model of air craft?

A: It is just inside the hatch that covers the fuel cap. If you are fueling the airplane, you will always see that information inside that hatch.

Q: And if you are not the one who fueled the airplane?

A: Then you would never see that plaque.

Q: Were any other materials recovered from the plane?

A: Yes, the photograph marked as Exhibit 14 was pulled from the plane. The man depicted there is Zeke Fortenberry, based on a match to the photo on his pilot's license. Don't know who the woman is, but they appear to be friends at least.

Q: Finally, can you identify Exhibit 5?

A: Yes, that is a photograph of the wrecked Piper aircraft being piloted by Mr. Fortenberry on the night of his death.

Q: Have you told us every opinion you have formed or may reasonably form later about this event?

A: Yes, I think so, but I charge by the hour, so feel free to ask any you please.

Q: On that topic, how much do you charge for your testimony?

A: I charge $300 per hour for depositions and $500 per hour for trial testimony.

DEPOSITION OF THOMAS THOMPSON
NOVEMBER 19, 2014

Q: Can you state your full name for the record?

A Yes, my name is Thomas Thompson. I go by the nickname "T Bone Thompson."

Q: How old are you Mr. Thompson?

A I'm a spry 70.

Q: Where do you reside?

A I reside currently on my little place out west of Paradise, Lone Star.

Q: Where exactly is that?

A It's east of Eden and about 50 miles north and west of Fort Worth. It's a place called South Fork Ranch.

Q: How large is this ranch, Mr. Thompson?

A Well, the main part of the ranch is 1,000 acres, but then there's an annex to it that is 40,000 acres.

Q: What is your occupation or profession?

A I'm a businessman.

Q: What kind of business are you in?

A I own a chain of BBQ restaurants called T Bone Thompson's BBQ.

Q: How long have you been in that business?

A All my life.

Q: Are you familiar with an aircraft accident that occurred on your South Fork Ranch on August 18, 2013?

A Yes, I´m familiar with that unfortunate mishap.

Q: How did you learn of the mishap?

A I got a call from my ranch manager, C. Barrett Thomas, who told me that an airplane had crashed on our property.

Q: Did you go out to the ranch when you learned of the accident?

A Yes, the ranch manager and I met out there to take a look at the scene.

Q: Can you identify Exhibit 5?

A Yes, that is a photograph of the airplane that crashed on my ranch.

Q: Were you aware that the pilot was attempting to land on your runway?

A Yes, I heard that was the case, yes I did.

Q: Tell us something about the runway on your ranch?

A Well, when I bought the ranch it had a dirt field on it, where you could land maybe a crop dusting plane or a little single engine job, but it was really short and primitive, sort of like Kim Jong-un. It wasn't big enough to land a jet. So, I had a runway built that was big enough to land a jet.

Q: Can you identify Exhibit 6?

A Yes, that's a nice color photograph of my runway from the air at night.

Q: Just how big is the runway?

A The runway is just shy of 6,000 feet.

Q: Why did you have those runway lights installed?

A I figured if my friends came visiting that they might want to land there time from time, and some of them are night owls, so they might want to land there at night.

Q: Did you land there at night from time to time?

A Yes, time from time we would put my own airplane down on the ranch at night.

Q: Are you a pilot?

A Yes, I have a license. In fact, I have an instrument rating.

Q: Did you put in a pilot automated or pilot activated lighting system on your runway?

A Yes, we installed a PAL system a year or 2 after we built the runway. Usually, when friends or neighbors would fly over, they'd call and tell us when they were going to land, and the ranch manager would go out and turn the lights on and open the hanger up and greet them and bring them up to the ranch house. But the ranch manager wasn't always on the ranch, and some of my friends landed out there in the dark and then just showed up at the door like they were looking for a cup of sugar to borrow. We thought that was a little risky, so we had the PAL system installed and told them to turn the lights on their own selves.

Q: Did you put in a Unicom system in conjunction with the PAL system?

A: That's what's required to run one of the PAL systems, so, yes we did.

Q: Can you identify Exhibit 8?

A: That's a true and correct copy of the FAA regulation regarding the installation and maintenance of a PAL system on a private airstrip like mine. Or any other private airstrip, really, even if it's nicer than mine.

Q: Did any of your friends actually use the PAL system?

A No, after the PAL system went in, I could see the lights come on out there on the runway, and my friends found that dropping in unannounced wasn't near as funny anymore, so they quit it. They called the ranch manager or whoever they could roust out at the big house and asked for the lights to be turned on. Lazy bums never had the gumption to click their microphones that many times.

Q: Did you personally ever use the PAL system?

A No, if I was going to land on the ranch at night, I would call the ranch manager, tell him to get over there to the runway and open up the hanger, turn the runway lights on, and have a vehicle ready to haul my old bones up to the ranch house.

Q: So, I take it that you are not personally familiar with anyone who ever actually used the PAL system on your runway?

A Yes, that is absolutely true. Put it in at great personal expense and nobody bothered to use it.

Q: What was the cost of this runway and lighting system, by the way?

A: Well, that's a tough question because some of the funds came through a federal grant assistance program owing to the fact that the vice-president liked to land there to hunt on the ranch from time to time. Not the present one, but a couple VPs back.

Q: Can you identify Exhibit 12?

A Yes, that is an email that I sent to the ranch manager about the runway.

Q: Is it a true and correct copy of the email?

A Yes, sir.

Q: What kind of maintenance issues were you having at the runway that caused you to send to the ranch manager this email?

A Oh, I think the remote control for the big hanger door was not working or something like that.

Q: When was the last time that you had the PAL system checked?

A I spent tons of money on that runway all the time. There were qualified people out there looking at the runway all the time, I can't image that anything was wrong with the system.

Q: But do you know whether it was working on the night of the accident?

A Look, these systems are pretty easy to use, but let's say a guy got himself in a jam by running out of fuel in the middle of the night in the middle of nowhere. He might be too panicked to be able to count the clicks on his microphone. I suggest that you look somewhere else for a scape goat.

Q: Can you identify Exhibit 4?

A: That's just an email from me to the ranch manager discussing business at the ranch. But it is a true and correct copy of the truly irrelevant email.

Q: Exhibit 4 says you thought the ranch manager was spending too much on the airstrip at the ranch. What did you mean by that?

A: It's pretty self-explanatory. It was my country way of saying that the expenses were not in line with the benefits.

Q: Have you told us all the information that you have or possibly could have about this event?

A: Yes.

Q: Please tell us your name?

A: My name is Kim Bates.

Q: Where do you reside?

A: I reside in Paris.

Q: France?

A: Lone Star.

Q: Where were you raised?

A: Athens.

Q: Greece?

A: Lone Star.

Q: What is your educational background?

A: After I graduated from high school in Athens, and that is in Lone Star, I went on to Columbia University up in New York. I got a degree there in Philosophy. I found I couldn't get much of a job with a Philosophy degree, even from Columbia, so I came back to school and picked up a Master's degree from Tarleton University in Aeronautical Engineering.

Q: And where is that school?

A: Egypt.

Q: The country?

A: No, the city between Shiner and Houston. Not from here, are you?

Q: What did you do after you got out of college?

A: I went to work for a helicopter manufacturing outfit in Fort Worth. I worked there for 12 years.

Q: Why did you leave that job?

A: Well, it was a company that had a manufacturing facility in Armadillo. They said that they were going to transfer me to Armadillo, so I said "adios."

Q: What did you do then?

A: I opened a consulting engineering firm that specialized in consulting with aircraft manufacturers and their lawyers on matters in litigation.

Q: Have you actually investigated accidents involving aircraft?

A: Yes, both helicopters and fixed wing planes.

Q: Have you ever been recognized in a court of law as an expert in aircraft accident investigations?

A: Yes, several state and federal courts have allowed my testimony.

Q: Has your testimony ever been excluded by a court?

A: Not even in Refugio, likely because I know how to say it.

Q: Have you been asked to look at the accident that happened on August 18, 2013 at the South Fork Ranch?

A: Yes, and I diligently undertook to read all of the depositions that had been taken in this case, and reviewed each and every one of the exhibits that have been identified. I also reviewed the Federal Aviation Administration's regulations both on automatic runway lighting systems and on the obligations of a pilot to do appropriate calculations before each and every successful flight.

Q: Based on your review of the materials you just described, and based on your experience and education, did you form any opinions regarding the cause of the accident on August 18, 2013 at the South Fork Ranch?

A: Yes, I formed three principal opinions. First, in my opinion, the owner of this private landing strip was not negligent in terms of his maintenance of the facilities. Second, the accident was directly caused by the failure of Mr. Fortenberry, as the pilot in command of the aircraft, to perform appropriate fuel calculations before undertaking the journey. Third, it is my considered opinion that the accident was also, or perhaps alternatively, caused by the fact that the aircraft manufacturer supplied the wrong owner's manual with this aircraft, leading the pilot to believe that he had more available fuel than he did.

Q: Let's start with your first opinion—what is the basis for saying that Mr. Thompson was not negligent in his maintenance of the PAL system on his huge runway?

A: If you'll look at Exhibit 8, a true and correct copy of the FAA regulation concerning these PAL systems, you'll see that it was not mandatory that Mr. Thompson even have a PAL system out there. That aside, assuming he had a system and had any duty to maintain and repair it, the regulation does not impose a strict standard on Mr. Thompson. It just says that if he has a system, and he accepted federal money to install it, then he had a responsibility to maintain the system as would a reasonably prudent person. In my opinion, that's what Mr. Thompson did. He maintained it in the same way a reasonable man would do so under the circumstances.

Q: Can you identify Exhibit 12?

A: That's an email from Mr. Thompson regarding equipment at the airfield. You'll notice that the email was only 10 days before the crash, and in my opinion getting equipment fixed on a remote strip like that within 30 days would have been reasonable. After all, no one ever used the PAL system after it was installed. But we're not even sure what equipment the email refers to, so we are guessing about the 10 day thing as well.

Q: But you'll agree that the PAL system was not operating at the time of the accident?

A: Well, yes.

Q: With respect to your second opinion, what is the basis for saying that this accident was pilot error?

A: Well, if you will look at Exhibit 1, the NTSB report, that's the very conclusion that the NTSB itself came to. But operating independently of and ignoring the NTSB report for all purposes, I would come to the same conclusion.

Q: Why is that?

A: FAA regulations require a pilot to perform fuel calculations before commencing any flight. A pilot must be aware of how much fuel he or she has on board an aircraft and how much fuel will be consumed getting from point A to point B. These fuel calculations are a critical part of what every pilot must do before leaving the ground.

Q: Can you identify Exhibit 7?

A: That's a true and correct copy of the FAA regulation regarding calculation of fuel for a mission.

Q: Do you believe that Mr. Fortenberry failed to properly calculate fuel?

A: Fortenberry ran out of fuel. Therefore, he either miscalculated the amount of fuel in the aircraft or he miscalculated the amount of the fuel to be consumed during the flight.

Q: What does a pilot need to make the required calculations?

A: He or she needs to know how much fuel the plane consumes per hour, and then how many hours it will take to reach the destination. Simple calculation.

Q: How does the pilot figure out the amount of fuel consumed per hour?

A: That's information that is in the airplane's manual.

Q: And how does the pilot figure out the time it will take to reach the destination?

A: That's a matter of looking at the intended flight path and calculating the miles between takeoff and landing, then calculating the speed of the aircraft over the ground. So, if the distance is 120 miles and the speed over the ground will be 120 mph, the travel time is one hour, so the pilot needs to be sure he has enough fuel to run the plane for that hour plus another 45 minutes.

Q: How does the pilot determine the speed of the plane?

A: That's just a matter of taking the cruising speed of the plane and then looking to see if there is going to be a headwind or a tailwind or a crosswind or no wind or whatever. If there is a headwind of 20 mph, that will mean that the plane may be traveling at 120 mph through the air, but the wind is slowing down the progress over the ground to just 100 mph.

Q: So why was Fortenberry at fault here?

A: One of two things happened. One, he may have known the cruising speed of the plane, but he failed to properly determine the amount of headwind he would have, which left him short of the destination when the fuel ran out. He may have thought he needed four hours of fuel, but the headwind meant he needed 5 hours.

Q: And what's the other possibility?

A: Fortenberry may have failed to understand how much fuel the aircraft would carry, so he thought he had just enough for the trip, but he was wrong on the capacity. Same sad result either way.

Q: What was the capacity of the plane in terms of fuel?

A: According to Exhibit 2, the manual for the plane he was flying, the fuel capacity of that plane was 50 gallons, with 45 usuable, and the engine burned 10 gallons per hour.

Q: Have you crunched the numbers for the fuel calculation that Fortenberry should have done?

A: Sure. Given the distance and no headwind, Fortenberry's trip would take 4 hours, because the distance was 480 miles, more or less, and the plane could cruise at 120 mph, so 4 hours. At 10 gallons per hour, that burns 40 gallons, which leaves him at least 5, which meets the rule. But, there was a headwind of 22 to 25 knots or 25 to 28 mph, which slowed his progress to 95 to 93 mph over the ground. Divide 480 by 93 and you get about 5.2 hours, which would burn 52 gallons. So there it is.

Q: Can you identify Exhibit 13?

A: Yes, those are my handwritten calculations concerning fuel that I just described verbally to you.

Q: There has been information that Mr. Fortenberry relied on wind speed information from a local TV station in making his calculations; in your opinion, was he negligent in doing so?

A: Yes, the correct procedure is to contact NOAA and determine the winds up where the plane will be flying. It's nice to know what the wind on the ground is when you go to land the plane, but it is critical to know what kind of wind you'll be spending your quality time in upstairs.

Q: Can you identify Exhibit 10?

A: That's a wind speed aloft report from NOAA, showing winds to be from 180 degrees, or straight South, at 25 mph on the day and at the time of the accident. If Fortenberry did not get this information, the flight planning would never be correct.

Q: Is this based on actual observations, or is it a forecast?

A: It is what it says it is, a forecast.

Q: Do you know what the actual wind speed was in the area in question at the time Mr. Fortenberry was traversing it?

A: NOAA forecasts are pretty reliable, but to answer your specific question, no.

Q: Can you identify Exhibit 3?

A: That's a true and correct copy of the airplane manual that was found in the wreck.

Q: Is it the correct manual for the plane Fortenberry was flying?

A: No, it's not. This is for a Skymobile. He was flying a Cygnet.

Q: By the way, what is a Cygnet?

A: Baby swan. Piper has culture.

Q: Does this bring us to your third opinion?

A: Yes, this manual shows the usuable fuel capacity of the plane to be 55 gallons and the burn rate to be the same 10 gallons per hour. If Fortenberry relied on this 55 gallon number, he may have believed that he had enough fuel on board to make the flight, even given the headwind.

Q: In your opinion, should an airplane manufacturer make sure that it sends the correct manual with a plane?

A: Absolutely. This is the information that forms the basis for the pilot's calculations of fuel required. If this is wrong, the pilot may miscalculate the fuel required.

Q: Have you told us all the opinions that you have formed or possibly could form about this event?

A: Yes.

Q: Do you charge for your work on a case like this?

A: Yes, I charge $450 an hour to answer your questions in a deposition and $650 an hour to answer the same questions at trial.

Aircraft Accident Report

Crash on Emergency Landing
Following Failure of Single
Power Source
Piper Cygnet N1776WR
August 18, 2013

National
Transportation
Safety Board

490L'Enfant Plaza, S.W.
Washington, D.C. 20594

EXHIBIT 1

Abstract: This report discusses the August 18, 2013, accident involving a Piper Cygnet, N1776WR, operated by Zeke Fortenberry, which crashed while attempting an emergency landing after losing power. The nighttime flight originated at MCI in Kansas City, Missouri and was intended to terminate at DFW between Dallas and Fort Worth, Lone Star. Fortenberry was instrument rated at the time of the accident. The pilot contacted Fort Worth Air Route Traffic Control to declare an emergency due to power failure, following which he attempted to locate a private air facility located on a ranch 50 miles to the north and east of the intended termination point. The ranch runway had a Pilot Activated Lighting system that the pilot was unable to activate. The pilot attempted a landing in what he thought was open pasture land, but struck several trees. The aircraft was severely damaged and the pilot was fatally injured.

1. Factual Information

1.1 History of Flight

The flight originated at MCI in Kansas City, Missouri at 7:04 p.m. Central Daylight Savings Time with an intended destination of DFW between Dallas and Fort Worth, Lone Star. Prior to takeoff, the pilot consulted a local weather channel to determine winds at the destination. Once airborne, the pilot traveled along a straight flight path until approximately 11: 22 p.m. CDST, when he contacted Fort Worth Air Route Traffic Control to declare an emergency based on total power failure of his single engine aircraft. After circling in an area 50 miles north and east of the intended destination, the pilot attempted a landing, but struck several trees.

1.2 Personnel Information

The pilot of N1776WR was Zeke Fortenberry, a resident of Kansas, who held certification for flight under instrument flight rules (“IFR”).

1.3 Airplane Information

The involved aircraft was a Piper Cygnet tail number N1776WR manufactured in 1967. It was owned by Chris Jensen, a personal friend of the deceased pilot. Logs retrieved from the aircraft after the incident revealed no maintenance issues.

1.4 Meteorological Information

Information from NOAA shows clear conditions at the time of origination of the flight at MCI, with winds at 130 degrees and 10 knots at the intended flight altitude of 5000 feet. NOAA information for DFW shows forecast winds at 180 degrees and 18 knots at the intended flight altitude of 5000 feet above sea level at the time of departure from MCI, and winds at 180 degrees and 25 knots at the anticipated time of arrival at the destination.

1.5 Items Recovered From Aircraft

The following items were recovered from the site of the incident:

Pilot's license of Zeke Fortenberry

Log book

Manual for Piper Skymobile

Photograph depicting Zeke Fortenberry and unidentified female human

2. Conclusions

2.1 Findings

1. Post-incident investigation at the scene of the crash revealed the presence of aviation fuel in very limited amounts. Analysis of the engine and its components showed that the engine was not producing power at the time of the crash, but nothing in the investigation suggested that the engine was not capable of producing power at that time. The fuel lines were intact and contained no fuel. The carburetor was intact and contained no fuel.

2. Prior to departure, the pilot accessed the internet website of WFAA TV in Dallas to determine surface winds in the Dallas area, which were indicated as "NNE at 10 mph" at that time. There is no evidence that the pilot accessed flight weather conditions available from NOAA prior to departure.

3. Because the pilot did not activate his transponder during this flight, there is no indication of his actual flight path. Once the pilot declared an emergency, he was asked to and did activate his transponder, at which time Fort Worth Air Route Traffic Control ("ATC") identified the aircraft at a location along a flight path appropriate for the intended flight.

4. The pilot declared an emergency at 11:22 pm CDST by contacting Fort Worth ATC. He was directed to a privately owned airfield within 10 nautical miles of his location, but the pilot was unable to activate the runway lighting system, which was set up to activate by clicking the pilot's microphone 7 times.

5. Subsequent investigation of the PAL system on the airfield indicated that the system was not functioning at the time of the accident.

6. The aircraft crashed in a wooded area of South Fork Ranch 50 miles to the northeast of DFW after the pilot unsuccessfully attempted an emergency landing.

7. The aircraft manual recovered at the scene of the crash was identified as the manual for a Piper Skymobile, not a Piper Cygnet.

2.2 Probable Cause(s)

The National Transportation Safety Board determines that the probable cause(s) of this accident to be:

1. The aircraft lost engine power due to insufficient fuel.

2. Given the intended flight distance, weather conditions, and the fuel capacity of the aircraft, the pilot did not have sufficient fuel to reach his intended destination and continue flight for 45 minutes.

3. The airplane manual recovered at the crash site listed an incorrect fuel capacity for the airplane flown by Fortenberry.

4. The PAL system on South Fork Ranch was not in operational condition at the time of the crash.

5. The pilot was not directed to another nearby private airfield, specifically Stinson Ranch Field, which was 10 miles from South Fork Ranch airfield on a heading of 270 degrees from that field.

6. The pilot failed to properly execute an emergency no-power landing in an area free of obstructions.

PERFORMANCE SPECIFICATIONS

SPEED:	
Maximum at Sea Level	123MPH
Cruise, 75% Power at 8000 Ft	120MPH
CRUISING FUEL CONSUMPTION/HOUR	10 GAL
RATE OF CLIMB AT SEA LEVEL	700 FPM
SERVICE CEILING	13,000 FT
TAKEOFF PERFORMANCE:	
Ground Roll	890FT
Total Distance Over 50-Ft Obstacle	1625 FT
LANDING PERFORMANCE:	540FT
Ground Roll	1280 FT
Total Distance Over 50-Ft Obstacle	
STALL SPEED (KCAS):	
Flaps Up, Power Off	51 KNOTS
Flaps Down, Power Off	46KNOTS
MAXIMUM WEIGHT:	
Ramp	2407 LBS
Takeoff or Landing	2400 LBS
STANDARD EMPTY WEIGHT:	
Skymobile	1427 LBS
Super Skymobile	1454 LBS
MAXIMUM USEFUL LOAD:	
Skymobile	980 LBS
Super Skymobile	953 LBS
	120 LBS
BAGGAGE ALLOWANCE	13.8
WING LOADING: Pounds/Sq Ft	15.0
POWER LOADING: Pounds/HP	
FUEL CAPACITY: Total	50 GAL.
Usable	45 GAL
OIL CAPACITY	8QTS
ENGINE: Lycoming	0-320-D2J
160 BHP at 2700 RPM	
PROPELLER: Fixed Pitch, Diameter	75 IN.

The above performance figures are based on the indicated weights, standard atmospheric conditions, level hard-surface dry runways, and no wind. They are calculated values derived from flight tests conducted under carefully documented conditions and will vary with individual airplanes and numerous factors affecting flight performance.

EXHIBIT 2

PERFORMANCE SPECIFICATIONS

SPEED:	
Maximum at Sea Level	123MPH
Cruise, 75% Power at 8000 Ft	120MPH
CRUISING FUEL CONSUMPTION/HOUR	10 GAL
RATE OF CLIMB AT SEA LEVEL	700 FPM
SERVICE CEILING	13,000 FT
TAKEOFF PERFORMANCE:	
Ground Roll	890FT
Total Distance Over 50-Ft Obstacle	1625 FT
LANDING PERFORMANCE:	540FT
Ground Roll	1280 FT
Total Distance Over 50-Ft Obstacle	
STALL SPEED (KCAS):	
Flaps Up, Power Off	51 KNOTS
Flaps Down, Power Off	46KNOTS
MAXIMUM WEIGHT:	
Ramp	2407 LBS
Takeoff or Landing	2400 LBS
STANDARD EMPTY WEIGHT:	
Skymobile	1427 LBS
Super Skymobile	1454 LBS
MAXIMUM USEFUL LOAD:	
Skymobile	980 LBS
Super Skymobile	953 LBS
	120 LBS
BAGGAGE ALLOWANCE	13.8
WING LOADING: Pounds/Sq Ft	15.0
POWER LOADING: Pounds/HP	
FUEL CAPACITY: Total	60 GAL.
Usable	55 GAL
OIL CAPACITY	8QTS
ENGINE: Lycoming	0-320-D2J
160 BHP at 2700 RPM	
PROPELLER: Fixed Pitch, Diameter	75 IN.

The above performance figures are based on the indicated weights, standard atmospheric conditions, level hard-surface dry runways, and no wind. They are calculated values derived from flight tests conducted under carefully documented conditions and will vary with individual airplanes and numerous factors affecting flight performance.

EXHIBIT 3

From: TBoneT [Thomas.Thompson@bbqking.com]
Sent: Monday July 1, 2013 6:48 PM
To: CB Thomas [CBarrett.Thomas@bbqking.com]
Re: Runway Expenses and More Runway Expenses

CB:

Just got out of a meeting with our CFO. She showed me the line item expenses on the runway out at South Fork. Holy cow! Can't we reign this thing in a little? I mean, really. We've got folks coming out there every few days working on something or other.

T Bone

EXHIBIT 4


EXHIBIT 5


NTC 2016 Regional–Page 49
EXHIBIT 6

Part 91 > Section 167 - Fuel requirements for flight in IFR conditions

(a) No person may operate a civil aircraft in IFR conditions unless it carries enough fuel (considering weather reports and forecasts and weather conditions) to --

(1) Complete the flight to the first airport of intended landing;

(2) Except as provided in paragraph (b) of this section, fly from that airport to the alternate airport; and

(3) Fly after that for 45 minutes at normal cruising speed or, for helicopters, fly after that for 30 minutes at normal cruising speed.

(b) Paragraph (a)(2) of this section does not apply if:

(1) Part 97 of this chapter prescribes a standard instrument approach procedure to, or a special instrument approach procedure has been issued by the Administrator to the operator for, the first airport of intended landing; and

(2) Appropriate weather reports or weather forecasts, or a combination of them, indicate the following:

(i) For aircraft other than helicopters. For at least 1 hour before and for 1 hour after the estimated time of arrival, the ceiling will be at least 2,000 feet above the airport elevation and the visibility will be at least 3 statute miles.

(ii) For helicopters. At the estimated time of arrival and for 1 hour after the estimated time of arrival, the ceiling will be at least 1,000 feet above the airport elevation, or at least 400 feet above the lowest applicable approach minima, whichever is higher, and the visibility will be at least 2 statute miles.

[Doc. No. 98-4390, 65 FR 3546, Jan. 21, 2000]

EXHIBIT 7

U.S. Department of Transportation
Federal Aviation Administration

Advisory Circular

Subject: SPECIFICATION L-854, RADIO CONTROL EQUIPMENT
Date: 06/27/07
Initiated by: AAS-100

1. **PURPOSE.** This advisory circular (AC) contains the specifications for radio control equipment to be used for controlling airport lighting facilities.

2. **APPLICATION.** The specifications contained in this AC are recommended by the FAA in all applications involving development of this nature. For airport projects receiving Federal funds under the airport grant assistance or the passenger facility charge programs, the use of this specification is mandatory.

1. SCOPE AND CLASSIFICATION.

1.1 Scope.

This specification covers the equipment requirements for radio control systems to be used for remote control of airport lighting facilities from aircraft, from a ground location, or from both. The basic system elements include radio receivers, radio transmitters, encoders, and decoders.

3.3 Operating Requirements.

The radio control equipment will be used to operate airport lighting facilities per the following:

3.3.1 Air-to-Ground System.

a. The lighting facility will be operated from aircraft by clicking the microphone button a specified number of times within a 5-second period.

…….

3.3.2 Maintenance and Repair.

a. The operator of the airport shall maintain the lighting facility consistent with the practices of reasonably prudent airport facility operators.

b. If the lighting system fails to perform as designed, the operator shall undertake all necessary repairs to ensure that the system performs in accordance with its design and with the requirements of this Circular. Such repairs shall be completed within a reasonable time after the operator becomes aware of any deficiency in system performance.

.....

EXHIBIT 8

TRANSCRIPTION OF COMMUNICATION BETWEEN PILOT OF N1776WR AND FORT WORTH AIR ROUTE TRAFFIC CONTROL CENTER DATED 18 AUGUST 2013 PURSUANT TO NTSB INVESTIGATION CA2013-1040 REGARDING FATAL ACCIDENT

N1776WR: Fort Worth Air Traffic Control, this is Piper 1776 Whiskey Romeo, declaring an emergency.

FORT WORTH AIR ROUTE TRAFFIC CONTROL CENTER/ALEX BELL (ATC): 76 Whiskey Romeo, Fort Worth Air Traffic Control. What is the nature of your emergency, sir? Over.

N1776WR: Ah, I seem to have lost power and I can't restart the engine. Is there a runway nearby?

ATC: Where are you, approximately? Over.

N1776WR: Probably 50 miles to the north and east of Fort Worth. Over.

ATC: 76 Whiskey Romeo, are you squawking? I don't see anything out in your area. Over.

N1776WR: Oh, I guess not. What do you want me to squawk? Over.

ATC: 76 Whiskey Romeo, squawk 4500. Over.

N1776WR: OK, I've got the transponder on and I'm squawking 4500. Do you have me? Over.

ATC: 76 Whiskey Romeo, I have you now and you were about right on the location. There are no public runways within 50 miles of your current location. What is your altitude and airspeed, sir? Over.

N1776WR: Crap! Looks like I am well and truly screwed. I am at 3000 feet and I've reduced airspeed to 80 knots to try to stay up here longer.

ATC: 76 Whiskey Romeo, what aircraft sir? Over.

N1776WR: I am flying a piece of crap Piper Cygnet. Hey, I'm looking at my iPad av app and I see what might be a private airfield about 5 miles off my left wing. Can you see that? Over.

ATC: 76 Whiskey Romeo, ah, yes, I see a private strip marked as South Fork Ranch on the sectional and it is 10 miles on a heading of 90 degrees from your present. It looks like it has a PAL system. Are you familiar with? Over.

N1776WR: Yeah, I just saw that PAL system on my iPad. I've flown in on some strips with PAL systems. Anything different about this one? Looks like the usual Unicom setup. Is that what you're seeing? Can you tell me how it is set for clicks? Over.

EXHIBIT 9

ATC: 76 Whiskey Romeo, those private fields are always set up at 3 clicks. Can you reduce altitude on a heading of 95 degrees? That should take you right over the top of the strip. It's a big one, by the way. 6,000 feet. Over.

N1776WR: OK, I should be on top of the strip. You sure it's 3 clicks? I'm clicking like a madman but I don't see any lights.

ATC: Ah, Whiskey Romeo, I show you on top of the strip. Stop clicking for 30 seconds and try another 3 click sequence. Over.

N1776WR: OK, I tried the 3 click but I don't see crap still. Could it be a 5 or 7?

ATC: Whiskey Romeo, I still see you over the airstrip. What's your altitude?

N1776WR: I'm not seeing this at all. I've dropped to 1500 by way. What's ground level at this spot?

ATC: Whiskey Romeo, ground level is uncertain in that area. It varies between 250 and 500 above sea level. You need to assume ground level is 500, sir. Over.

N1776WR: All this circling is eating my altitude. I'm at 1,000 and falling fast. Any other suggestions?

ATC: Whiskey Romeo, can you get a visual on anything on the ground? Over.

N1776WR: Yeah, maybe. I think I can see a pasture down there, but there's no moon and no ambient. It's dark as hell. If it's a pasture, it could be enough to put this down. I guess I'll give it a shot.

ATC: Whiskey Romeo, what's your altitude? I've lost radar contact, sir. Over.

N1776WR: I am at 700, so probably just 200 AGL. Here goes nothing.

ATC: Whiskey Romeo, good luck and we're all counting on you. Over.

ATC: 76 Whiskey Romeo, do you copy? Over.

ATC: 76 Whiskey Romeo, do you copy? Over.

ATC: Supervisor Trevino, Alex Bell. I need to report a probable plane down. Piper N1776 Whiskey Romeo declared an emergency with power gone. He was circling South Fork Ranch airstrip at last contact. My last communication was 5 minutes ago when he was reporting engine trouble and probably 200 feet AGL. I recommend we commence a search.

NOAA NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
UNITED STATES DEPARTMENT OF COMMERCE

INFORMATION FOR VFR FLIGHT AT 5,000 FEET MCI TO DFW

Departure Closest Terminal Weather 18 AUG 2013

Kansas City MO [KMCI] hourly observation on the 18th at 7:53pm CDST (0053Z) wind 140° at 7 knots, visibility 10 miles, sky clear below 12,000 feet.

Kansas City MO [KMCI] terminal forecast issued on the 18th at 6:20pm CDST (2320Z), valid from the 18th at 7pm CDST through the 18th at 11pm CDST	
7:00pm CDST	wind 130° at 10 knots, visibility greater than 6 miles, 4,500 feet scattered
9:00pm CDST	wind variable at 5 knots, visibility 5 miles, mist, sky clear
11:00pm CDST	wind 110° at 8 knots, visibility greater than 6 miles, sky clear

Destination Closest Terminal Weather 18 AUG 2013

Dallas Fort Worth LS (Dallas/Fort Worth Intl) [KDFW] hourly observation on the 18th at 7:53pm CDST (0053Z) wind 110° at 17 knots, visibility 10 miles, 8,000 feet few, 30,000 feet broken.

Dallas Fort Worth LS (Dallas/Fort Worth Intl) [KDFW] terminal forecast issued on the 18th at 6:25pm CDST (2325Z), valid from the 18th at 7pm CDST through the 18th at 11pm CDST	
7:00pm CDST	wind 180° at 18 knots, visibility greater than 6 miles, 4,500 feet scattered
9:00pm CDST	wind 180° at 22 knots, visibility 5 miles, sky clear
11:00pm CDST	wind 180° at 25 knots, visibility greater than 6 miles, sky clear

EXHIBIT 10

WFAA8 HOME | WEATHER | LOCAL | TRAFFIC | BAD TRAFFIC | SPORTS

WEATHER

LOCATION SEARCH

DALLAS, TX

84°

LOCAL FORECAST
TONIGHT: Clear skies with isolated (10%) showers. Winds: NNE 10 mph Low: 70.

August 18, 2013 6:30 PM

EXHIBIT 11

From: TBoneT [Thomas.Thompson@bbqking.com]
Sent: Saturday August 10, 2013 9:55 PM
To: CB Thomas [CBarrett.Thomas@bbqking.com]
Re: Runway Lighting

C Barrett:

I am out at South Fork entertaining some folks. They told me that the runways lights wouldn't come on when they did the click thing. Since you're not out here and you're not answering your phone, they had to call me at the big house. Good thing they could get cell service from their G4. I had to send the cook over to turn the darn things on by hand. Not good. And the food got cold. Nothing worse than cold ribs. Except Aggie football, of course.

Tommy

EXHIBIT 12

FUEL BURN RATE = 10 GAL/HOUR

DISTANCE = 480 MILES

SPEED = AIRSPEED =/- WIND

AIRSPEED = 120 MPH

WIND = + 10 (TAILWIND)

GROUNDSPEED = 120+10 = 130

TIME TO DESTINATION = 480/130 = 3.7 HOURS

FUEL REQUIRED = 37 GALLONS

WIND = - 28 MPH (HEADWIND)

GROUNDSPEED = 120 - 28 = 3 MPH

TIME TO DESTINATION = 480/95 = 5.2 HOURS

FUEL REQUIRED = 52 GALLONS

EXHIBIT 13

EXHIBIT 14

NO. 14-004687-CV

MADELYN FORTENBERRY	§	**IN THE 479th DISTRICT COURT**
	§	
Plaintiff,	§	
	§	**IN AND FOR**
	§	
v.	§	
	§	**DALLAS COUNTY**
THOMAS THOMPSON	§	
	§	
Defendant.	§	**STATE OF LONE STAR**

FINAL JURY INSTRUCTIONS

Members of the jury, I shall now instruct you on the law that you must follow in reaching your verdict. It is your duty as jurors to decide the issues, and only those issues, that I submit for determination by your verdict. In reaching your verdict, you should consider and weigh the evidence, decide the disputed issues of fact, and apply the law on which I shall instruct you to the facts as you find them, from the evidence.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received into evidence, and all facts that may be admitted or agreed to by the parties. In determining the facts, you may draw reasonable inferences from the evidence. You may make deductions and reach conclusions which reason and common sense lead you to draw from the facts shown by the evidence in this case, but you should not speculate on any matters outside the evidence.

In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the

reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in light of your own experience and common sense.

The issue for your determination is whether the death of Zeke Fortenberry was the result of the negligence, if any, of Thomas Thompson or of Piper Aircraft and Machine Parts, Inc. or of Fortenberry himself. In that regard, you are instructed that Madelyn Fortenberry has the burden of proof on the negligence claim against Thomas Thompson, meaning that Madelyn Fortenberry must convince you by a preponderance of the evidence that Zeke Fortenberry's death was the result of Thomas Thompson's negligence, if any. You are further instructed that Thomas Thompson has the burden of proof on the claim that Zeke Fortenberry's death was caused in whole or in part by the negligence, if any, of Piper Aircraft and Machine Parts, Inc. or the negligence, if any, of Fortenberry himself.

You are instructed that the term "negligence" means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using *ordinary care* would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence unless you are otherwise instructed. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "preponderance of the evidence" means the greater weight and degree of credible evidence admitted in this case. Whenever a question requires an answer other than "Yes" or "No," your answer must be based on a preponderance of the evidence unless you are otherwise instructed.

At this point in the trial, you, as jurors, are deciding if Zeke Fortenberry's death was proximately caused, in whole or in part, by the negligence, if any, of Thomas Thompson, or of Piper Aircraft and Machine Parts, Inc., or of Fortenberry himself. If you find Thomas Thompson was at fault in whole or in part, you will hear additional argument from the attorneys and you will hear additional witnesses testify concerning damages. Until that time, you are not to concern yourselves with any question of damages.

Your verdict must be based on the evidence that has been received and the law on which I have instructed you. In reaching your verdict, you are not to be swayed from the performance of your duty by prejudice, sympathy, or any other sentiment for or against any party. When you retire to the jury room, you should select one of your members to act as foreperson, to preside over your deliberations, and to sign your verdict. You will be given a verdict form, which I shall now read and explain to you.

(READ VERDICT FORM)

When you have agreed on your verdict, the foreperson, acting for the jury, should date and sign the verdict form and return it to the courtroom. You may now retire to consider your verdict.

NO. 14-004687-CV

MADELYN FORTENBERRY	§	**IN THE 479th DISTRICT COURT**
	§	
Plaintiff,	§	
	§	**IN AND FOR**
	§	
v.	§	
	§	**DALLAS COUNTY**
THOMAS THOMPSON	§	
	§	
Defendant.	§	**STATE OF LONE STAR**

JURY QUESTION NO. 1

Did the negligence, if any, of the following proximately cause the death of Zeke Fortenberry?

Answer "Yes" or "No" for each of the following:

1. Thomas Thompson _____
2. Piper Aircraft & Machine Parts _____
3. Zeke Fortenberry _____

If you have answered "yes" with respect to more than one party in response to Jury Question No. 1, answer the following Jury Question; otherwise, do not answer the following Jury Question.

JURY QUESTION NO. 2

What percentage of the negligence that caused the death of Zeke Fortenberry do you find to be attributable to each of those listed below and found by you, in your answer to Jury Question No. 1, to have been negligent?

1. Thomas Thompson _____

2. Piper Aircraft & Machine Parts _____

3. Zeke Fortenberry _____

Total 100%

CERTIFICATE

We the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into Court as our verdict.

_____
Presiding Juror

To be signed by those rendering the verdict if not unanimous.
