

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

MICHAEL SLOCUM, *Executor of the Estate of
Timothy Donovan,*

CATHY CARTER, *as surviving spouse of
Timothy M. Donovan,*

Plaintiffs,

v.

ALEXANDER SCHLEICHER, GMBH&CO.
SEGELFLUGZEUGBAU,

EASTERN SAILPLANE, INC., and

JOHN MURRAY, *Individually and as
Owner/Employee of Eastern Sailplane, Inc.,*

Defendants.

NO. 11-cv _____

JURY TRIAL DEMANDED

COMPLAINT

NOW COME the Plaintiffs, by and through the undersigned counsel, and for their complaint and jury demand, state the following:

I. PARTIES AND JURISDICTION

1. Plaintiff Michael Slocum is the duly appointed Executor of the Estate of Timothy Donovan, having been appointed by the Probate Court of Sullivan County New Hampshire, on or about July 11, 2009, Probate Docket No.2009-183. The Decedent, Timothy Donovan, died on June 29, 2009 in the State of Washington. At the time of his death and at all relevant times Decedent Timothy Donovan was an adult resident of the State of New Hampshire, residing in Sullivan County. The Decedent's mother, June Donovan, is an adult resident of New York State.

2. At all relevant times, Mr. Donovan was a well-trained and experienced airplane

and glider pilot. Mr. Donovan, during much of his work life, was a master machinist and prominent businessman involved in New Hampshire's Precision Valley machining and manufacturing corridor. Until August of 2008, Mr. Donovan owned and operated Optimum Manufacturing Corporation, in Claremont, New Hampshire providing specialized, technical machining services, when it was sold to the Optical Filter Corporation, a subsidiary of Corning, Inc. Mr. Donovan was also the sole member of a New Hampshire limited liability corporation, Emerald Eagle, LLC, which directly owned the glider in question.

3. Plaintiff Cathy Carter is the surviving spouse of Decedent Timothy Donovan. At the time of his death and at all relevant times Plaintiff Cathy Carter was an adult resident of the State of New Hampshire, residing in Sullivan County.

4. Defendant Alexander Schleicher, GmbH & Co. Segelflugzeugbau (Schleicher) is a German Corporation with its principal place of business in Germany.

5. Defendant Eastern Sailplane, Inc. (Eastern Sailplane) is an Ohio Corporation with its principal place of business in Ohio.

6. Defendant John Murray is the president and owner of Eastern Sailplane, and an adult resident of Ohio.

7. Subject matter jurisdiction is founded on diversity of citizenship, 28 U.S.C. § 1332, in that the Plaintiffs are residents of New Hampshire; Eastern Sailplane is organized and has its principal place of business in Ohio; Schleicher is a German Corporation with its principal place of business in Germany, and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

8. This Court has specific and general personal jurisdiction over Schleicher because Schleicher has purposefully availed itself of the laws of New Hampshire and the injuries complained of are related to Schleicher's purposeful availment such that the exercise of personal jurisdiction is reasonable. Decedent purchased the subject ASW 27-18 E glider A/K/A ASG 29

E with serial number 29567, registration N129TD (Subject Glider) in which he perished directly from Schleicher and corresponded with employees of Schleicher, including one of Schleicher's co-directors, on several occasions. Decedent's correspondence concerned, among other things, instructions regarding payment for the Subject Glider from Decedent's limited liability company to Schleicher, and requests that Schleicher ship new parts for the Subject Glider to Decedent in New Hampshire. Specifically:

- a. On or about October 9, 2008, Decedent arranged to purchase the Subject Glider in which he later died directly from Schleicher. He received an email at the email address of his New Hampshire corporation, Optimum Manufacturing Corporation, from Renate Mihm, an employee of Schleicher, with wiring instructions so that he could wire bank funds from New Hampshire directly to Schleicher's bank in Germany to pay for the Subject Glider.
- b. On October 15, 2008, Decedent wrote an email from his Optimum Manufacturing email account to Ulrich Kremer asking follow-up questions on wiring the funds for the Subject Glider to Schleicher. Ulrich Kremer operates Schleicher with his brother Peter Kremer. Peter and Ulrich Kremer are the grandsons of Schleicher founder Alexander Kremer. Ulrich Kremer responded to Decedent at his Optimum Manufacturing email account with further instructions to send the funds through John Murray's bank account. Mr. Murray owns and operates co-defendant Eastern Sailplane.

- c. Renate Mihm emailed Decedent at his Optimum Manufacturing email account a confirmation of his order of the Subject Glider from Schleicher on December 18, 2007.
- d. On March 26, 2009, Decedent wrote an email from his Optimum Manufacturing email account to Mr. Murray at Eastern Sailplane requesting new pins for the Subject Glider. The pins Decedent requested were for use in attaching and aligning the wings of the Subject Glider to the fuselage. Decedent requested that Mr. Murray have Schleicher ship the pins to him at 239 CEDA Road, P.O. Box 1027, Charlestown, NH 03603.
- e. Schleicher did in fact then ship the requested replacement pins to the Decedent at the address requested in Charlestown, New Hampshire.
- f. On May 12, 2009, Decedent wrote an email from his Optimum Manufacturing email account to Mr. Murray and Ulrich Kremer at Schleicher. He thanked Mr. Murray and Mr. Kremer for sending the new pins. Decedent then described a problem he had with the Subject Glider that resulted in the destruction of the propeller. Decedent then asked that they ship a new propeller to him at 608 West Unity Road, Claremont, New Hampshire 03743. Mr. Kremer responded to Decedent's email and offered to ship a used propeller to the Decedent immediately or ship a new propeller to him the following week. Mr. Kremer further attached a schematic for the propeller.

- g. Schleicher then directly shipped a propeller to the Decedent at the Claremont, New Hampshire address as requested.

9. This Court has specific and general personal jurisdiction over Eastern Sailplane and John Murray because Eastern Sailplane and Murray purposefully availed themselves of the laws of New Hampshire and the injuries complained of are related to their purposeful availment such that the exercise of personal jurisdiction is reasonable. Decedent's purchase of the Subject Glider in which he perished began with contacts to Eastern Sailplane, which is the sole authorized distributor of Schleicher gliders in the United States. Eastern Sailplane was in contact with Decedent and Schleicher in order to facilitate the purchase of the Subject Glider and attendant transfer of funds, and to assist in importing the Subject Glider into the United States and certifying its airworthiness. Eastern Sailplane also assisted Decedent in procuring replacement parts for the Subject Glider from Schleicher. Specifically:

- a. Decedent and John Murray, who is Eastern Sailplane's president and owner, were acquaintances, and Mr. Murray was at all relevant times aware that Decedent lived in New Hampshire and operated a business in New Hampshire.
- b. Decedent and Mr. Murray corresponded via email about the purchase of a Schleicher ASG 29 E glider in the summer of 2007. At all relevant times, Decedent used the email account for his business located in New Hampshire to correspond with Eastern and Mr. Murray.
- c. On October 19, 2008, Mr. Murray emailed with the Decedent and Ulrich Kremer of Schleicher to arrange for Decedent's payment to Schleicher and Schleicher's shipment of the Subject Glider.

- d. On October 28, 2008, Mr. Murray emailed with the Decedent and Schleicher's Mihm to confirm that payment had been processed for the Subject Glider on Schleicher's behalf.
 - e. On or about November 22, 2008, Mr. Murray imported the Subject Glider and certified its airworthiness pursuant to Federal Aviation Administration regulations, thereby allowing Decedent to fly the Subject Glider in the United States and completing the transaction.
 - f. After the Subject Glider was certificated, Mr. Murray and Eastern Sailplane arranged for the Subject Glider and accompanying documents to be transferred to the Decedent in New Hampshire.
 - g. On March 26, 2009, Mr. Murray received an email from Decedent requesting that he acquire replacement pins from Schleicher for attaching and aligning the wings of the Subject Glider to the fuselage and ensuring that they are correctly aligned. Decedent requested that Mr. Murray send the pins to him at P.O. Box 921, Charlestown, New Hampshire, 03603 and the pins were indeed shipped to Decedent at the address requested.
 - h. On May 12, 2009, Decedent wrote an email to Mr. Murray and Ulrich Kremer at Schleicher. He thanked Mr. Murray and Mr. Kremer for sending the new pins. Decedent then explained a problem he had with the Subject Glider that resulted in the destruction of the propeller. Decedent then asked that they ship a new propeller to him at 608 West Unity Road, Claremont, New Hampshire 03743 and the propeller was indeed shipped to the Decedent at the address requested.
10. Venue in this District satisfies the requirement of 28 U.S.C. § 1391 because a

substantial part of the events and/or omissions giving rise to the claim occurred in this district.

II. GENERAL ALLEGATIONS

11. Defendant Schleicher is engaged in one or more businesses designing, manufacturing, testing, marketing, selling, servicing, and supporting aircraft sold under the brand name Schleicher.

12. Schleicher profits from the above-described business activities and is a strong proponent for and supporter of the sport of flying gliders. Schleicher shows its strong support for the sport of flying gliders by, *inter alia*, publicizing and sponsoring competitions all over the world and subsidizing the costs of said competitions.

13. Defendant Schleicher designed, manufactured, tested, marketed, sold, serviced, and supported the subject ASW 27-18 E glider A/K/A ASG 29 E with serial number 29567, registration N129TD (“Subject Glider”).

14. As part of the design, manufacturing and marketing of the ASW 27-18 E glider, Schleicher applied to the European Aviation Safety Agency (“EASA”) for a Type Certificate, which was required to allow the ASW 27-18 E glider to be registered and flown legally in Europe and the United States.

15. The EASA certified the ASW 27-18 E glider, but did not approve the glider for aerobatic maneuvers.

16. Under the applicable aviation regulations, a “spin” is an aerobatic maneuver.

17. Due to the nature of glider flight, which ordinarily involves the use of columns of rising air known as thermals to provide lift, spins are a common maneuver that are reasonably expected to be performed by glider pilots.

18. Indeed, at times prior to his crash, Mr. Donovan experienced spins with the Subject Glider with the full knowledge of Mr. Murray, Eastern Sailplane and Schleicher.

19. The ASW 27-18 E glider possesses inherently hazardous and undesirable flight

characteristics that prevent spin recovery under reasonable conditions and create an unreasonably dangerous propensity for the glider to degenerate from a spin to an unrecoverable spiral. This condition creates a significant risk of loss of controlled flight and crashing.

20. The ASW 27-18 E glider was imported into the United States as an “experimental” aircraft, triggering extensive warning requirements and flight restrictions in order to be in compliance with its airworthiness certificate.

21. Nonetheless, the ASW 27 18-E glider is marketed by the defendants as having “unbeatable performance.” The defendants fail to warn end users that spins are strictly prohibited under all conditions and that the ASW 27 18-E glider possesses undesirable flight characteristics that prevent spin recovery under reasonable conditions and create an unreasonably dangerous propensity for the glider to degenerate from a spin to an unrecoverable spiral.

22. The defendants further failed to provide proper instructions, procedures, placarding, and/or after sale support for pilots, such as the Decedent, with respect to the flight conditions that render the ASW 27 18-E glider unrecoverable from a spin under reasonable conditions and create an unreasonably dangerous propensity for the glider to degenerate from a spin into an unrecoverable spiral.

23. The Decedent, through Emerald Eagle LLC, a New Hampshire limited liability company in which he was the sole member, ordered the Subject Glider from Schleicher through its dealer, Eastern Sailplane, on December 18, 2007 and purchased the glider on October 27, 2008.

24. The Schleicher Dealer, Defendant Eastern Sailplane took possession of the Subject Glider in November 2008.

25. On November 13, 2008 John Murray, individually and on behalf of Eastern Sailplane, certified that he had complied with Federal Aviation Administration’s airworthiness requirements, regulations, and directives, and the Federal Aviation Administration, relying

thereon, issued an airworthiness certificate for the Subject Glider on November 14, 2008.

26. On November 14, 2008, John Murray, individually and on behalf of Eastern Sailplane, performed a condition inspection and an airworthiness inspection of the Subject Glider. Mr. Murray failed to properly inspect the Subject Glider and failed to ensure that it met the applicable Federal Aviation Administration airworthiness requirements, regulations and directives.

27. Schleicher also failed to prescribe proper procedures for and supervise the conduct of the airworthiness inspection by Eastern Sailplane and Murray with sufficient specificity.

28. Due to the nature of the relationship between Murray, Eastern Sailplane and Schleicher, the Decedent was required to work through Murray and Eastern Sailplane to obtain the Subject Glider and the required airworthiness certification.

29. Mr. Murray, individually and on behalf of Eastern Sailplane, further failed to correct Schleicher's failure to provide proper instructions, procedures, placarding, and after sale support for pilots with respect to the flight conditions which render it uncontrollable and incapable of recovering from a spin under some conditions.

30. The Decedent took possession of the Subject Glider in or about January 2009. He first flew the Subject Glider in or about March 2009.

31. During his first four initial flights the Decedent discovered a problem with the pins of the Subject Glider. They were rusting and not adhering and aligning the wings properly. He reported the problem to the defendants and requested new pins be sent to him under warranty. In or about April or May 2009 new pins were sent to the Decedent in New Hampshire and he installed them in the Subject Glider with express instructions from Murray.

32. In late June, 2009, Decedent transported the Subject Glider from New Hampshire to Ephrata, Washington to participate in a glider competition. Mr. Murray attended the

competition.

33. On June 29, 2009, the Decedent again encountered a problem with the adhering and aligning of the wings of the Subject Glider, and sought advice from Mr. Murray in his capacities as an individual, as a representative of Eastern Sailplane, and as the manufacturer's representative on site for Schleicher.

34. After the Decedent reported the problems to John Murray, Murray advised Decedent that it was safe to fly the Subject Glider. Decedent reasonably relied on Mr. Murray's advice.

35. Shortly thereafter on the same date, Decedent flew the glider in Ephrata during a practice session for the competition. During the early part of that practice session, the Decedent entered an unintentional spin, which nearly caused him to collide with another glider. He recovered from that spin.

III. THE CRASH OF THE SUBJECT GLIDER

36. Later during the same practice session in Ephrata on June 29, 2009, and after speaking with Murray, while piloting the Subject Glider at approximately 14:15 P.D.T., the Decedent entered a spin from which he could not recover.

37. One of the wings of the Subject Glider separated from the fuselage while in flight and the other wing broke into pieces.

38. The Subject Glider fell from an altitude of approximately 3,000 feet, resulting in the death of Timothy Donovan.

39. Unfortunately, the Decedent was unable to open the canopy of the Subject Glider to extract himself from the aircraft and utilize his parachute prior to the crash.

40. The crash occurred as a result of the undesirable flight characteristics of the Subject Glider and the defective wings and other component parts.

41. As a result of the loss of control of the Subject Glider and its rapid descent

Timothy Donovan sustained personal injuries and conscious pain and suffering.

42. As a result of the loss of control of the Subject Glider and its rapid descent Timothy Donovan suffered extreme emotional distress and mental anguish due to his knowledge that the Subject Glider would crash and his death was imminent, as the Subject Glider failed, lost control and plummeted to the ground during the final moments of his life.

43. As a result of the loss of control of the Subject Glider and its rapid descent, Timothy Donovan died from the severe trauma he sustained when the Subject Glider impacted the ground.

44. As a result of the crash, Timothy Donovan died and thus, suffered a loss of the otherwise probable duration of his life, the enjoyment of that life over its probable duration and the loss of his earning capacity over his probable life's duration. Decedent also lost the benefit of certain contracts he had with the purchaser of his business.

45. Cathy Carter became a widow as a result of Timothy Donovan's death and lost his comfort, companionship and society.

IV. CAUSES OF ACTION

COUNT I – CAUSE OF ACTION AGAINST SCHLEICHER FOR WRONGFUL DEATH UNDER R.S.A. 556:12 OR OTHER APPLICABLE LAW BASED UPON NEGLIGENCE, BREACH OF WARRANTY, AND STRICT LIABILITY.

46. Plaintiffs hereby incorporate by reference as though set forth fully herein each and every paragraph set forth above.

47. Each Plaintiff brings this action in his/her own right and on behalf of the Wrongful Death Beneficiaries of the Decedents and hereby claims all damages recoverable under the New Hampshire Wrongful Death Statute or any other law applicable to this claim.

48. At all relevant times, the Subject Glider and its components and accessories were being used for their ordinary and intended uses by their intended users.

49. Schleicher was negligent in one or more of the following respects:

- a. In designing, manufacturing, testing, marketing, selling and supporting the ASW 27-18 E model glider and specifically the Subject Glider with hazardous aerodynamic characteristics, which rendered it unrecoverable from a spin under reasonable conditions and created an unreasonably dangerous propensity for the glider to degenerate from a spin into an unrecoverable spiral;
- b. In selecting Eastern Sailplane and/or John Murray as its only designated and authorized representative and dealer in the United States;
- c. In failing to properly supervise and/or train John Murray and/or other employees of Eastern Sailplane.
- d. In failing to warn pilots of the hazardous aerodynamic characteristics of the ASW 27-18 E model glider;
- e. In failing to provide proper instructions, procedures, placarding, and after sale support for pilots with respect to the flight conditions, which rendered the Subject Glider unrecoverable from a spin under reasonable conditions and created an unreasonably dangerous propensity for the glider to degenerate from a spin into an unrecoverable spiral;
- f. In failing to properly test the aircraft with respect to the aircraft's hazardous aerodynamic characteristics, which rendered the Subject Glider unrecoverable from a spin under reasonable conditions and created an unreasonably dangerous propensity for the glider to degenerate from a spin into an unrecoverable spiral;
- g. In failing to properly test the wings on the Subject Glider to ensure that they were not defective in design or manufacture or in the design or manufacture of the manner in which said wings attached to the fuselage of the Subject Glider,

including, but not limited to the design and manufacture of the pins used to attach and align said wings to the fuselage;

- h. In failing to inspect, test, check, certify, remove, replace, install, overhaul, service, modify, alter and maintain the Subject Glider so as to cause it to be in an airworthy condition and capable of safe flight, and to perform such inspections, maintenance, services, repairs and other actions in accordance with the standards of performance in the industry, and in a reasonable and prudent manner so as not to cause injury or death to the occupant of the Subject Glider.
- i. Otherwise in their design, manufacture, testing, marketing, selling and supporting of the ASW 27-18 E model glider and the Subject Glider.

50. The ASW 27-18 E model glider, and specifically the Subject Glider, was unreasonably dangerous and defective in one or more of the following respects:

- a. As designed and manufactured, it had hazardous aerodynamic characteristics, which rendered the Subject Glider unrecoverable from a spin under reasonable conditions and created an unreasonably dangerous propensity for the glider to degenerate from a spin into an unrecoverable spiral;
- b. It was distributed and supported with inadequate and deficient warnings and placarding concerning the aircraft's aerodynamic characteristics that rendered the Subject Glider unrecoverable from a spin under reasonable conditions and created an unreasonably dangerous propensity for the glider to degenerate from a spin into an unrecoverable spiral;
- c. It was distributed and supported with inadequate and deficient instructions concerning the aircraft's aerodynamic characteristics, which rendered the Subject Glider unrecoverable from a spin under reasonable conditions and

created an unreasonably dangerous propensity for the glider to degenerate from a spin into an unrecoverable spiral;

- d. As designed and/or manufactured, its wings and its component parts, including attachment and alignment pins, were defective, leading to a loss of control;
- e. During its final flight, the Subject Glider failed and did not function as intended, which resulted in loss of controlled flight and the crash of the Subject Glider; and
- f. The Subject Glider was otherwise unreasonably dangerous because it was unrecoverable from a spin under reasonable conditions and had an unreasonably dangerous propensity to degenerate from a spin into an unrecoverable spiral.

51. Schleicher breached express and implied warranties in that the ASW 27-18 E model glider, and specifically, the Subject Glider was unreasonably dangerous and defective when used as intended in one or more of the following respects:

- a. As designed and manufactured, it had hazardous aerodynamic characteristics, which rendered the Subject Glider unrecoverable from a spin under reasonable conditions and created an unreasonably dangerous propensity for the glider to degenerate from a spin into an unrecoverable spiral;
- b. It was distributed and supported with inadequate and deficient warnings and placarding concerning the aircraft's aerodynamic characteristics, which rendered the Subject Glider unrecoverable from a spin under reasonable conditions and created an unreasonably dangerous propensity for the glider to degenerate from a spin into an unrecoverable spiral;
- c. It was distributed and supported with inadequate and deficient instructions

concerning the aircraft's aerodynamic characteristics, which rendered the Subject Glider unrecoverable from a spin under reasonable conditions and created an unreasonably dangerous propensity for the glider to degenerate from a spin into an unrecoverable spiral;

- d. As designed and/or manufactured, its wings and its component parts, including attachment and alignment pins, were defective, leading to a loss of control;
- e. During its final flight certain the Subject Glider failed and did not function as intended, which resulted in loss of controlled flight and the crash of the Subject Glider; and
- f. The Subject Glider was otherwise unreasonably dangerous because it was unrecoverable from a spin under reasonable conditions and had an unreasonably dangerous propensity to degenerate from a spin into an unrecoverable spiral.

52. As a direct and proximate result of the foregoing, Plaintiff's decedent and/or Plaintiff's estate suffered mental and physical pain in consequence of his death, mental anguish in realization and anticipation of his death, incurred expenses occasioned by the death, including funeral expense, suffered a loss of Plaintiff's probable duration of life and loss of the enjoyment of his life during that probable duration (i.e., hedonic damages), and suffered a loss of Plaintiff's capacity to earn income during his probable work life. Plaintiff's decedent also lost the full benefit of one or more contracts that he negotiated during his lifetime that provided for payments from, by or on behalf of Corning, Inc., and/or Optical Filter Corporation.

53. As a direct and proximate result of the foregoing, Plaintiff's widow suffered the loss of Plaintiff's comfort, society and companionship.

54. Plaintiffs expressly demand pre-judgment interest, post-judgment interest, fees

where applicable, and costs of this matter.

55. Plaintiffs demand a jury trial on all counts triable thereto.

56. As a result of the foregoing, the Plaintiffs and Decedent's Wrongful Death Beneficiaries are entitled to all elements of damages described above and all other damages recoverable under the New Hampshire Wrongful Death Statute or any other applicable law.

WHEREFORE, each Plaintiff demands judgment against Schleicher in an amount that fully compensates each Plaintiff and the Beneficiary for the wrongful death of her husband, including interest and costs.

**COUNT II – CAUSE OF ACTION AGAINST SCHLEICHER FOR SURVIVAL
DAMAGES PREMISED ON NEGLIGENCE, BREACH OF WARRANTY, AND STRICT
LIABILITY**

57. The preceding paragraphs are re-alleged and incorporated fully herein.

58. As a direct and proximate result of Schleicher's wrongful conduct as previously described and alleged herein:

- a. The Decedent have and will in the future be wrongfully deprived of earnings, earning capacity and the right to earn a living;
- b. The Estate of the Decedent is entitled to recover an amount equal to the gross amount that the Decedent could have earned between the date of his death and the end of his life expectancy;
- c. The Estate of the Decedent is entitled to recover for the Decedent's personal injuries, conscious pain and suffering, extreme emotional distress, and knowledge of impending doom, disaster and death during the subject flight that culminated in his death on June 29, 2009.

59. As a direct and proximate result of the foregoing, Plaintiff's widow suffered the loss of Plaintiff's comfort, society and companionship.

60. Plaintiffs expressly demand pre-judgment interest, post-judgment interest, fees

where applicable, and costs of this matter.

61. Plaintiffs demand a jury trial on all counts triable thereto.

WHEREFORE, each Plaintiff demands judgment against Schleicher in an amount that fully compensates the Estate of the Decedent for Decedent's personal injuries, loss of earnings, conscious pain and suffering, and all elements and measures of survival damages recoverable under New Hampshire law or other applicable law, including interest and costs.

**COUNT III – CAUSE OF ACTION AGAINST EASTERN SAILPLANE AND JOHN
MURRAY FOR WRONGFUL DEATH UNDER R.S.A. 556:12 OR OTHER
APPLICABLE LAW BASED UPON NEGLIGENCE**

62. Plaintiffs hereby incorporate by reference as though set forth fully herein each and every paragraph set forth above.

63. On or before June 29, 2007 and at all relevant times herein Defendant Eastern Sailplane was a Schleicher dealer, service and maintenance facility (specializing in Schleicher series aircraft maintenance, service, modifications and repair), engaged in the business of inspecting, testing, repairing, overhauling, maintaining, assembling, installing, checking, certifying, removing, replacing, modifying, and altering gliders and their component parts and systems, including the Subject Glider and its component parts, accessories and systems.

64. On a continuous basis prior to the final flight of the Subject Glider and at all other relevant times herein, Defendant Eastern Sailplane, by and through its officers, agents, employees, servants, joint venturers or partners, and Mr. Murray, inspected, tested, certified, serviced, removed, installed, replaced, overhauled, assembled, modified, altered, repaired and/or maintained the Subject Glider and its component parts and systems, including but not limited to maintenance and inspection of the Subject Glider's wings, pins, bushings, fuselage and fitting points; and certified the aircraft as airworthy and in compliance with applicable airworthiness regulations, directives and requirements; provided services for the Subject Glider that included

warranty repair and parts and inspections and certifications; otherwise undertook to keep and/or ensure that the Subject Glider and its component parts and accessories were in a safe and airworthy condition; and sold, or otherwise placed the Subject Glider and its component parts into the stream of commerce in a defective and unreasonably dangerous condition, which was a cause of the Plaintiffs' damages.

65. On or before June 29, 2009 and at all relevant times herein Defendant Eastern Sailplane and Mr. Murray owed Decedent a duty of care to inspect, test, check, certify, remove, replace, install, overhaul, service, modify, alter and maintain the Subject Glider so as to cause it to be in an airworthy condition and capable of safe flight, and to perform such inspections, maintenance, services, repairs and other actions in accordance with the manufacturer's requirements, standards of performance in the industry, and in a reasonable and prudent manner so as not to cause injury or death to the occupant of the Subject Glider.

66. Said crash, injuries and death and resultant damages were proximately caused by the negligence of Defendant Eastern Sailplane, by and through its officers, agents, employees, servants, joint venturers, partners, Mr. Murray, and others under its employ or control, and each of them, in that they breached their aforesaid duties, carelessly failed to properly inspect and correct dangerous and unairworthy conditions in respect to the Subject Glider, negligently and carelessly failed to inspect, test, check, certify, service, repair, remove, replace, install, overhaul, assemble, modify, alter, and otherwise maintain the subject aircraft and its component parts, accessories, and systems, including but not limited to maintenance of the Subject Glider's wings, pins, bushings, fuselage and fitting points; and were otherwise negligent in the maintenance, inspection, service, certification and/or repair of the Subject Glider and its component parts, accessories and systems.

67. As a direct and proximate result of the foregoing, Plaintiffs' decedent and/or Plaintiff's estate suffered mental and physical pain in consequence of his death, mental anguish

in realization and anticipation of his death, incurred expenses occasioned by the death, including funeral expense, suffered a loss of Plaintiff's probable duration of life and loss of the enjoyment of his life during that probable duration (i.e., hedonic damages), and suffered a loss of Plaintiff's capacity to earn income during his probable work life. Plaintiff's decedent also lost the full benefit of one or more contracts that he negotiated during his lifetime that provided for payments from, by or on behalf of Corning, Inc., and/or Optical Filter Corporation.

68. As a direct and proximate result of the foregoing, Plaintiff's widow suffered the loss of Plaintiff's comfort, society and companionship.

69. Plaintiffs expressly demand pre-judgment interest, post-judgment interest, fees where applicable, and costs of this matter.

70. Plaintiffs demand a jury trial on all counts triable thereto.

WHEREFORE, each Plaintiff demands judgment against Eastern Sailplane and Mr. Murray in an amount that fully compensates each Plaintiff and the Beneficiary for the wrongful death of her husband, including interest and costs.

COUNT IV – CAUSE OF ACTION AGAINST EASTERN SAILPLANE AND JOHN MURRAY FOR WRONGFUL DEATH UNDER R.S.A. 556:12 OR OTHER APPLICABLE LAW BASED UPON BREACH OF WARRANTY

71. Plaintiffs hereby incorporate by reference as though set forth fully herein each and every paragraph set forth above.

72. On a continuous basis prior to the final flight of the Subject Glider and at all other relevant times herein, Defendant Eastern Sailplane, by and through its officers, agents, employees, servants, joint venturers or partners, and Mr. Murray, inspected, tested, certified, serviced, removed, installed, replaced, overhauled, assembled, modified, altered, repaired and/or maintained the Subject Glider and its component parts and systems, including but not limited to maintenance and inspection of the Subject Glider's wings, pins, bushings, fuselage and fitting points; and certified the aircraft as airworthy and in compliance with applicable airworthiness

regulations, directives and requirements; provided services for the Subject Glider that included warranty repair and parts and inspections and certifications; otherwise undertook to keep and/or ensure that the Subject Glider and its component parts and accessories were in a safe and airworthy condition; and sold, or otherwise placed the Subject Glider and its component parts into the stream of commerce in a defective and unreasonably dangerous conditions, which was a cause of the Plaintiffs' damages.

73. On or before June 29, 2009, and at all other relevant times, based upon Defendant Eastern Sailplane and Mr. Murray's inspection and certification of the Subject Glider, Defendant Eastern Sailplane and Mr. Murray expressly and/or implicitly warranted and represented that the Subject Glider and its component parts, accessories and systems were safe, airworthy, of merchantable quality and reasonably safe and fit for their general purposes for which they were inspected, installed, overhauled, altered, modified, tested, serviced, repaired, certified, maintained and intended to be used and were otherwise capable of providing a pilot safe transportation and that Defendant Eastern Sailplane had performed work and/or services in a proper fashion and in accordance with manufacturer's requirements, and standards of performance in the industry.

74. On or before June 29, 2009, and at all other relevant times, the Subject Glider and its component parts, accessories and systems were not safe, airworthy and capable of providing safe transportation and Defendant Eastern Sailplane had not performed work, inspections, tests, repairs, certification, maintenance and/or other services in a proper fashion and in accordance with the manufacturer's requirements, and standards of performance in the industry.

75. Plaintiffs' Decedent was a person whom Defendants John Murray and Eastern Sailplane should reasonably have foreseen and expected to use or have access to and/or be affected by the Subject Glider and its component parts, accessories and systems and Plaintiffs' Decedent relied upon Defendant Eastern Sailplane's express and implied misrepresentations

alleged above and on this basis agreed to fly the Subject Glider.

76. On or before June 29, 2009, and at all other relevant times, Defendants John Murray and Eastern Sailplane breached its warranties and representations regarding the Subject Glider and its component parts, accessories and systems in that the Subject Glider and its component parts, accessories and systems were not reasonably fit and safe for their general and ordinary purposes for which they were intended and were dangerous and defective.

77. As a direct and proximate result of the foregoing, Plaintiff's decedent and/or Plaintiff's estate suffered mental and physical pain in consequence of his death, mental anguish in realization and anticipation of his death, incurred expenses occasioned by the death, including funeral expense, suffered a loss of Plaintiff's probable duration of life and loss of the enjoyment of his life during that probable duration (i.e., hedonic damages), and suffered a loss of Plaintiff's capacity to earn income during his probable work life. Plaintiff's decedent also lost the full benefit of one or more contracts that he negotiated during his lifetime that provided for payments from, by or on behalf of Corning, Inc., and/or Optical Filter Corporation.

78. As a direct and proximate result of the foregoing, Plaintiff's widow suffered the loss of Plaintiff's comfort, society and companionship.

79. Plaintiffs expressly demand pre-judgment interest, post-judgment interest, fees where applicable, and costs of this matter.

80. Plaintiffs demand a jury trial on all counts triable thereto.

WHEREFORE, each Plaintiff demands judgment against Eastern Sailplane and Mr. Murray in an amount that fully compensates each Plaintiff and the Beneficiary for the wrongful death of her husband, including interest and costs.

COUNT V – CAUSE OF ACTION AGAINST EASTERN SAILPLANE AND JOHN MURRAY FOR WRONGFUL DEATH UNDER R.S.A. 556:12 OR OTHER APPLICABLE LAW BASED UPON NEGLIGENCE PER SE

81. Plaintiffs hereby incorporate by reference as though set forth fully herein each and every paragraph set forth above.

82. The Decedent, as a pilot of an airplane subject to the applicable airworthiness inspection regulations, was a member of the class of persons those regulations were designed to protect.

83. The harm the Decedent suffered in perishing when he crashed the Subject Glider is a harm that the applicable airworthiness regulations were designed to prevent.

84. Mr. Murray had a duty to act as the applicable airworthiness regulations direct, and was negligent per se in failing to do so when performing his inspection of the Subject Glider.

85. Mr. Murray took such actions individually, on behalf of the company he operates, Eastern Sailplane, and as an agent of Schleicher in ensuring the Subject Glider's compliance with United States airworthiness regulations.

86. As a direct and proximate result of Mr. Murray's and Eastern Sailplane's wrongful conduct as previously described and alleged herein:

- a. The Decedent has and will in the future be wrongfully deprived of earnings, earnings capacity and the right to earn a living;
- b. The Estate of the Decedent is entitled to recover an amount equal to the gross amount that the Decedent would have earned between the date of his death and the end of his life expectancy, subject to the cost of maintenance and support;
- c. The Estate of the Decedent is entitled to recover for the Decedent's personal injuries, conscious pain and suffering, extreme emotional distress, and knowledge of impending doom, disaster and death during the subject flight

that culminated in his death on June 29, 2009.

87. As a direct and proximate result of the foregoing, Plaintiff's widow suffered the loss of Plaintiff's comfort, society and companionship.

88. Plaintiffs expressly demand pre-judgment interest, post-judgment interest, fees where applicable, and costs of this matter.

89. Plaintiffs demand a jury trial on all counts triable thereto.

WHEREFORE, each Plaintiff demands judgment against Eastern Sailplane and Mr. Murray in an amount that fully compensates each Plaintiff and the Beneficiary for the wrongful death of her husband, including interest and costs.

COUNT VI – CAUSE OF ACTION AGAINST EASTERN SAILPLANE AND JOHN MURRAY FOR SURVIVAL DAMAGES BASED UPON NEGLIGENCE, BREACH OF WARRANTY, AND NEGLIGENCE PER SE

90. Plaintiffs hereby incorporate by reference as though set forth fully herein each and every paragraph set forth above.

91. Defendants John Murray and Eastern Sailplane carelessly failed to properly inspect and correct dangerous and unairworthy conditions in respect to the Subject Glider; negligently and carelessly failed to inspect, test, check, certify, service, repair, remove replace, install, overhaul, assemble, modify, alter, and otherwise maintain the Subject Glider and its component parts, accessories, and systems, including but not limited to maintenance of the Subject Glider's wings, pins, bushings, fuselage and fitting points; and were otherwise negligent in the maintenance, inspection, service, certification and/or repair of the Subject Glider and its component parts, accessories and systems.

92. As a direct and proximate result of John Murray's and Eastern Sailplane's wrongful conduct as previously described and alleged herein:

- a. The Decedent has and will in the future be wrongfully deprived of earnings, earnings capacity and the right to earn a living;

- b. The Estate of the Decedent is entitled to recover and amount equal to the gross amount that the Decedent would have earned between the date of his death and the end of his life expectancy, subject to the cost of maintenance and support;
- c. The Estate of the Decedent is entitled to recover for the Decedent's personal injuries, conscious pain and suffering, extreme emotional distress, and knowledge of impending doom, disaster and death during the subject flight that culminated in his death on June 29, 2009.

93. As a direct and proximate result of the foregoing, Plaintiff's widow suffered the loss of Plaintiff's comfort, society and companionship.

94. Plaintiffs expressly demand pre-judgment interest, post-judgment interest, fees where applicable, and costs of this matter.

95. Plaintiffs demand a jury trial on all counts triable thereto.

WHEREFORE, each Plaintiff demands judgment against Eastern Sailplane in an amount that fully compensates the Estate of the Decedent for Decedent's personal injuries, loss of earnings, conscious pain and suffering, and all elements and measures of survival damages recoverable under New Hampshire law or other applicable law, including interest and costs.

COUNT VIII – CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR ENHANCED COMPENSATORY DAMAGES

96. The Defendants' acts and omissions outlined herein, including but not limited to selling directly to Decedent an inherently dangerous product that killed him in a horrific crash and failing to warn him of the non-obvious inherently dangerous nature of that product, failing to properly testify and certify that product, and failing to warn him of the same, constitute wanton, oppressive, or malicious conduct. As such, Plaintiffs are entitled to enhanced compensatory damages to the maximum extent allowable by applicable law.

97. Plaintiffs expressly demand pre-judgment interest, post-judgment interest, fees where applicable, and costs of this matter.

98. Plaintiffs demand a jury trial on all counts triable thereto.

WHEREFORE, each Plaintiff demands judgment against Defendants in an amount that fully compensates each Plaintiff and the Beneficiary for the wrongful death of her husband, including interest and costs.

COUNT IX – CAUSE OF ACTION AGAINST SCHLEICHER, JOHN MURRAY AND EASTERN SAILPLANE FOR LOSS OF CONSORTIUM UNDER R.S.A. 556:12, II

99. Plaintiffs hereby incorporate by reference as though set forth fully herein each and every paragraph set forth above.

100. As a result of Timothy M. Donovan's death, which was caused by the various wrongful acts of the Defendants as set forth above and throughout, Decedent's widow, Plaintiff Cathy Carter has experienced a loss of the comfort, society, and companionship of the deceased. Ms. Carter also demands pre-judgment and post-judgment interest, fees where applicable and the costs of this matter.

101. Ms. Carter expressly demands pre-judgment interest, post-judgment interest, fees where applicable, and costs of this matter.

102. Ms. Carter demands a jury trial on all counts triable thereto.

WHEREFORE, Ms. Carter demands judgment against the Defendants that fully compensates her for her losses to the maximum extent recoverable under New Hampshire law or other applicable law, including interest and costs.

Respectfully submitted,

Michael J. Slocum, *as Executor of the Estate of
Timothy M. Donovan* and Cathy Carter, *as surviving
spouse of Timothy M. Donovan*,
By their attorneys,
Bernstein Shur, P.A.

Dated: 6/29/11

/s/ Andru H. Volinsky

Andru H. Volinsky, NH Bar # 2631
avolinsky@bernsteinshur.com
Edward J. Sackman, NH Bar # 19586
nsackman@bernsteinshur.com
670 N. Commercial Street, Suite 108
P.O. Box 1120
Manchester, NH 03105
603.623.8700

Co- Counsel for Plaintiffs

BRODKOWITZ LAW

/s/ Alisa Brodkowitz

Alisa Brodkowitz, Esq.
Pending Admission *Pro Hac Vice*
Washington State Bar Assoc. #31749
Brodkowitz Law
81 Vine Street, Suite 202
Seattle, WA 98121
Tel: (206)838-7531
Fax: (206)838-7532
alisa@brodkowitzlaw.com