

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No. B56 of 2019

BETWEEN:

**Mackellar Mining Equipment Pty Ltd ACN 010 398 428
and Dramatic Investments Pty Ltd ACN 059 863 204
t/as Partnership 818
First Appellant**

**Janet Elizabeth Wright as Representative of the Estate of
Leslie Arthur Wright (Deceased)
Second Appellant**

and

**Trad Thornton & Others as listed in the Notice of Appeal
Respondents**

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APPELLANTS' CHRONOLOGY

Part I:

I certify that this Chronology is in a form suitable for publication on the internet.

Part II:

Abbreviations

<i>ATSB</i>	Australian Transport Safety Bureau
<i>Dramatic Investments</i>	Dramatic Investments Pty Ltd
<i>Lambert</i>	Lambert Leasing Inc
<i>Mackellar Mining</i>	Mackellar Mining Equipment Pty Ltd
<i>Transair</i>	Lessbrook Pty Ltd t/as Transair

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No	Date	Event	Ref
1.	May/Jun 2003 ¹	Lambert, a United States company, entered into an agreement to sell a Fairchild Metro 23 aircraft to Partnership 818.	CAB 8 [12], 59 [1]
2.	17 Jun 2003	The aircraft was flown from the United States to Australia.	CAB 8 [12]
3.	17 Jun 2003	Mackellar Mining and Dramatic Investments entered into a business venture known as Partnership 818.	CAB 8 [9]
4.	17 Jun 2003	Partnership 818 leased the aircraft to Transair.	CAB 8 [9], [13], 59 [1]
5.	4 Jul 2003	A certificate of airworthiness was issued by the Civil Aviation Safety Authority.	CAB 8 [13]
6.	7 May 2005	The aircraft, whilst operated by Transair and in the course of a scheduled public transport flight from Bamaga to Cairns, with a stop at Lockhart River, crashed on approach to the Lockhart River aerodrome, killing both pilots and all 13 passengers.	CAB 7 [1], 59 [2]
7.	4 Apr 2007	Publication of ATSB Aviation Occurrence Report.	CAB 9 [14]
8.	4 May 2007	Proceedings were commenced in the Circuit Court of Cook County, Illinois by the representatives of the estates of 12 of the 13 passengers and both pilots against United States defendants.	CAB 9 [19], 59 [4]
9.	17 Aug 2007	Publication of Finding of Inquest of the State Coroner of Queensland.	CAB 9 [14]
10.	May 2008	The Respondents commenced wrongful death proceedings in the Circuit Court of Greene County, Missouri against Lambert, Partnership 818 and Mr Wright.	CAB 7 [1]
11.	Feb 2009	Lambert filed a motion to dismiss the Missouri proceedings on the ground, inter alia, of <i>forum non conveniens</i> .	CAB 11 [28], 60 [7]

¹ As Sofronoff P noted, there is a dispute (which this Court does not need to resolve) about the precise date and location of the contract of sale: CAB 59, fn 1.

No	Date	Event	Ref
12.	4 May 2009	Partnership 818 and Mr Wright filed a motion to dismiss the Missouri proceedings on the ground, inter alia, of <i>forum non conveniens</i> .	CAB 73 [76]
13.	11 May 2009	Respondents filed submissions in opposition to Lambert's motion to dismiss, and submitted that "Australia is neither available nor adequate to plaintiffs for their cause of action against defendant Lambert"	AFM 186 at 209
14.	Jun 2009	Publication of Supplementary ATSB Occurrence Report.	CAB 9 [14]
15.	7 Dec 2009	The Circuit Court of Greene Country, Missouri dismissed the motions to dismiss on <i>forum non conveniens</i> grounds (without reasons).	CAB 11 [28], 60 [7]; AFM 178-179
16.	24 Feb 2010 ²	The Missouri Court of Appeals, Southern District dismissed the appeals against the Circuit Court's 7 December 2009 orders (without reasons).	CAB 74 [76]; AFM 181-182
17.	23 Mar 2010	The Supreme Court of Missouri denied the applicants' petitions for writs of prohibition against the Court of Appeals' 24 February 2010 orders (without reasons).	CAB 74 [76]; AFM 184-185
18.	24 Mar 2010	The Appellants filed Answers to the Respondents' First Amended Petitions in the Missouri proceedings.	CAB 11 [29]
19.	29 Jul 2010	Lambert filed a third-party petition in the Missouri proceedings joining M7 Aerospace LP, Honeywell International Inc., Garman Limited, Jeppesen Sanderson Inc., and Airservices Australia Group. Each of these parties was an American company, except for Airservices Australia, which was Australian.	CAB 11 [29], 60 [8]
20.	23 Sep 2010	Jeppesen Sanderson Inc. filed cross-claims against the plaintiffs and Mr Wright in the Missouri proceedings.	CAB 11 [29]; AFM 308

² At CAB 11 [28], Lyons SJA mistakenly stated that the Missouri Court of Appeals dismissed the motion on 23 March 2010. Sofronoff P correctly found that that was in fact the date of the Supreme Court of Missouri's decision declining to entertain an appeal from the Court of Appeals' decision: CAB 74 [76].

No	Date	Event	Ref
21.	2 May 2012	Jeppesen Sanderson Inc. filed motion to amend cross-claims against the plaintiffs, Mr Wright, and Partnership 818 in the Missouri proceedings.	CAB 11 [29]; AFM 312-313
22.	7 May 2012	M7 Aerospace LP filed counterclaim against the plaintiffs and cross-claim against Mr Wright and Partnership 818 in the Missouri proceedings.	CAB 11 [29]; AFM 313
23.	7 May 2012	Honeywell International Inc. filed cross-claim against Mr Wright and Partnership 818 in the Missouri proceedings.	CAB 11 [29]; AFM 313
24.	29 May 2012	Partnership 818 filed answers to the third-party claims by Jeppesen Sanderson Inc. and Honeywell International Inc. in the Missouri proceedings.	AFM 313
25.	2 Oct 2013	The Missouri proceedings were removed to the United States Federal Court on the application of Airservices Australia, and stayed pending the outcome of the Illinois proceedings.	CAB 11 [29]; AFM 341
26.	8 Jul 2014	The Illinois Court granted summary judgment, dismissing all of the plaintiffs' claims.	CAB 10 [20], 11 [30], 59 [4]; AFM 87-112
27.	13 Feb 2015	Airservices Australia filed a motion for dismissal of the Missouri proceedings (in the US Federal Court) on <i>forum non conveniens</i> grounds.	CAB 11 [30] CAB 60 [8]; AFM 238-260, 345
28.	10 Mar 2015	Partnership 818 joins in the motion for dismissal of the Missouri proceedings on <i>forum non conveniens</i> grounds. Partnership 818 offers as conditions of dismissal in Missouri undertakings to protect the Respondents suing in Queensland. The motion was never determined.	CAB 11 [30], 60 [8]; AFM 261-264, 346, 349
29.	24 Nov 2015	Lambert filed an application in the Missouri proceedings for approval of a settlement it had reached with the plaintiffs.	CAB 11-12 [30]; AFM 348
30.	9 Dec 2015	The US Federal Court approved Lambert's settlement with the Missouri plaintiffs.	CAB 12 [30], 76 [84]; AFM 348

No	Date	Event	Ref
31.	28 Dec 2015	Notices were filed in the US Federal Court acknowledging receipt and satisfaction of settlement proceeds from Lambert from the Missouri proceedings.	CAB 12 [30]; AFM 349
32.	30 Dec 2015	The US Federal Court ordered Lambert to file a status report indicating whether it intended to pursue its claims against the remaining third-party defendants in the Missouri proceedings.	CAB 12 [31]; AFM 349
33.	11 Jan 2016	Lambert filed a status report in the US Federal Court in the Missouri proceedings indicating that it would not pursue the third-party claims.	CAB 12 [31], 60 [8]; AFM 349
34.	21 Jan 2016	All claims by and against Lambert and Airservices Australia in the Missouri proceedings were dismissed, and the proceedings were remanded back to the Circuit Court of Greene County, Missouri. The Court noted that all other motions remain pending for adjudication by the Missouri Court.	CAB 12 [32], 76 [84]; AFM 349
35.	3 Jan 2017	The Circuit Court of Greene County, Missouri issued a notice stating: "Court notes lack of recent activity. Pull to review in 45 days".	CAB 12 [32], 60 [11]; AFM 317
36.	13 Feb 2017	Several of the Missouri plaintiffs (i.e. Respondents in this Court) filed a petition in Greene County seeking the appointment of a next friend for the plaintiffs who were minors.	CAB 12 [33], 60 [11]
37.	27 Feb 2017	Hearing on motion for appointment of next friends and scheduling conference in the Missouri proceeding. Respondents give notice that they propose to seek leave to amend their pleading to substitute the First Appellants for "Partnership 818" as defendants.	AFM 265 at 269.30-40
38.	2 Mar 2017	The Circuit Court of Greene County made next friend orders in accordance with the 13 February 2017 petition.	CAB 12 [33], 60 [11]; AFM 319-320

No	Date	Event	Ref
39.	6 Mar 2017	The Appellants filed an Originating Application in the Supreme Court of Queensland seeking (a) declarations that the Appellants are not liable to the Respondents for any loss or damage suffered as a result of the deaths caused by the accident and (b) an anti-suit injunction.	CAB 7 [3], 12 [34], 60-61 [12]
40.	7 Mar 2017	The Appellants obtained an <i>ex parte</i> interim injunction from the Supreme Court of Queensland restraining the Respondents from progressing the Missouri proceedings.	CAB 12 [34], 61 [13]
41.	21 Mar 2017	The Supreme Court of Queensland extended the interim injunction.	CAB 12 [34], 61 [13]
42.	27 Apr 2017	The Supreme Court of Queensland extended the interim injunction.	CAB 12 [34], 61 [13]
43.	13 Jun 2017 ³	The Supreme Court of Queensland extended the interim injunction until trial of the Appellants' claim for a declaration and a permanent injunction, and ordered the Respondents to file any counterclaim by 23 August 2017.	CAB 12 [34], 30 [110], 61 [13]
44.	12 Jul 2017	The Respondents informed the Missouri Court of the Queensland proceeding and orders.	CAB 61 [14]; AFM 320
45.	11 Aug 2017	Hearing in Missouri consequent upon the Respondent's correspondence of 12 July 2017. The Attorney for the Respondents, Mr Wisner submits that Missouri Court should, of its own motion, make orders for moving the Missouri proceeding ahead.	AFM 162-176
46.	23 Aug 2017	The Respondents in the Queensland proceeding did not file any counterclaim pursuant to the 13 June 2017 orders.	CAB 30 [110]

³ At CAB 30 [110] Lyons SJA dates these orders 12 June 2017. This is a slip; her Honour referred to the correct date (13 June) earlier in her reasons at CAB 12 [34], as did Sofronoff P at CAB 61 [13].

No	Date	Event	Ref
47.	5 Sep 2017	Mr Wisner, on behalf of the Respondents, files submissions proposing that the Missouri Court strike out the Appellants' defences unless the Queensland injunctions are discharged.	AFM 265–299, 321
48.	29 Sep 2017	The Missouri Court determined that the Queensland orders had not affected any orders made by it.	CAB 12 [36], 61 [14]; AFM 321
49.	12 Oct 2017	The Respondents in the Queensland proceeding cross-applied for orders (a) vacating the interim injunction and (b) for the determination, as a separate issue, of whether the Appellants are entitled to a permanent injunction.	CAB 7 [6], 61 [13]
50.	26 Oct 2017	Appellants file Reply in Queensland proceeding in which they consent to use of depositions and discovered material from the Missouri proceeding in Queensland.	CAB29 TJ [107]; AFM 17.50
51.	14 Dec 2017	The Missouri Court expressed its “concern regarding the age of this case and its duty to advance and manage its docket, as well as to schedule in sufficient advance an unusually lengthy trial.” Of its own motion, the Court set the matter down for a jury trial commencing 3 June 2019 for three weeks.	CAB 13 [37], 8 [8], 61 [15]; AFM 322
52.	21 Dec 2017	The Missouri Court vacated the 3 June 2019 trial date and set a new date of 15 July 2019.	CAB 61 [15]; AFM 322
53.	12 Feb 2018	The Supreme Court of Queensland (Dalton J) made orders for the separate determination of whether the Appellants are entitled to permanent injunctive relief.	CAB 61 [13]

No	Date	Event	Ref
54.	14 May 2018	In their submissions for trial of the Queensland claim for injunction the Appellants indicate they will undertake to take no limitation defence in Queensland which could not have been raised in defence of the Missouri proceeding, and to treat investigation costs incurred in Missouri as costs which may be recovered on any costs order in the Respondents' favour in Queensland.	CAB 30, TJ [107]; AFM 38 – 39
55.	14-15 Jun 2018	The Supreme Court of Queensland (Lyons SJA) heard the Appellants' application for a permanent injunction.	CAB 5, 61 [16]
56.	23 Aug 2018	Lyons SJA delivered judgment.	CAB 5
57.	19 Nov 2018	The Queensland Court of Appeal heard the appeal.	CAB 55
58.	7 May 2019	The Queensland Court of Appeal delivered judgment.	CAB 55
59.	17 Sep 2019	The High Court of Australia (Bell, Keane and Gordon JJ) granted the Appellants special leave to appeal.	CAB 91

Dated 23 October 2019



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