

Akzo Nobel loses bid to transfer case worth ‘billions’ over Ichthys LNG project



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Dutch paint company Akzo Nobel has lost its bid to transfer a case over the \$45 billion Ichthys natural gas project to state court in Western Australia, with a judge finding the overlap with insurance-related proceedings in the state court was tolerable.

Federal Court Justice Katrina Banks-Smith on Wednesday refused Akzo Nobel's bid to transfer two proceedings over the \$45 billion Ichthys LNG project, which has been

plagued by delays, cost blowouts, and lawsuits, to Western Australia, where the Dutch paint company has brought related cases against several insurers.

“The proceedings in both courts are complex, and [Akzo Nobel] describes the amount at stake as being in the billions,” said Justice Banks-Smith.

Contractor JKC Australia and Japanese oil company INPEX brought Federal Court proceedings in September 2017 and July 2021, respectively, both alleging that Akzo Nobel misled them about a protective coating product known as Intertherm 228 used on pipework and equipment modules on the Ichthys LNG project..

JKC and INPEX claim they were misled or deceived into believing I228 was a suitable product for use on the project.

The Federal Court cases are listed for an 11-week trial starting in September 2024.

INPEX has brought three cases against a syndicate of 25 insurers in the Supreme Court of Western Australia, two of which have been consolidated, seeking indemnity for damages said to flow from the use of Intertherm 228.

The insurers include Lloyd’s, AIG Australia, Allianz Australia, Tokio Marine, Zurich Australian Insurance, Chubb Insurance Australia.

The Supreme Court proceedings, brought by INPEX in 2020, were described by Justice Lundberg in March as being “at a relatively early stage”, according Justice Banks-Smith’s judgment.

While Akzo Nobel applied to have the Federal Court cases transferred to WA, neither it nor JKC are parties to the Supreme Court proceedings.

Justice Banks-Smith found it was not in the interests of justice for the Federal Court case to be transferred to WA at such a “late stage”.

The judge found the issues in the WA proceedings were discrete enough that the risk of inconsistent findings was tolerable.

“The prospect that the risk of inconsistent findings of a nature that might otherwise bring the administration of justice into disrepute, is significantly reduced by the manageable and tolerable nature of some inevitable overlap between the respective proceedings,” Justice Banks-Smith said.

While Akzo Nobel claimed the transfer would save judicial resources, Justice Banks-Smith said that was “by no means clear”.

In October 2021, [Inpex and JKC settled all claims](#) relating to the construction of the project in a separate but related dispute, by entering a global settlement deed in which the parties agreed to make efforts to maximise recovery from their insurers.

Under the agreement, JKC may become liable to pay a “significant amount” to Inpex unless Inpex recovers a certain amount from its own insurers or from AkzoNobel by March 2027.

JKC relies on the settlement deed to prove part of its claim against AkzoNobel.

In claims disputed by AkzoNobel, JKC says that its potential liability to pay Inpex under the settlement is a liability in respect of the repair of the damaged I228; is less than the full amount required to replace the coating; and arose as a result of AkzoNobel’s alleged misleading and deceptive conduct.

JKC is represented by Duncan Miller SC and Mike Smith, instructed by Solomon Brothers. Akzo Nobel is represented by Brahma Dharmananda SC, William Keane and Paul Walker, instructed by Clayton Utz.

The Federal Court cases are [JKC Australia LNG Pty Ltd v AkzoNobel NV](#) and [INPEX v AkzoNobel NV](#).