

# Another dispute over Ichthys LNG project may be brewing



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The contractor behind the Ichthys LNG project has won court approval to use documents discovered in its lawsuit against Dutch paint manufacturer AkzoNobel for use in any potential dispute with INPEX, the head company behind the liquid natural gas project.

In a judgment released Tuesday, Federal Court Justice Katrina Banks-Smith relieved contractor JKC Australia LPG of its implied undertaking to use the documents only in its lawsuit against AkzoNobel. JKC will now be allowed to use the documents in relation to potential claims by INPEX Operations Australia or Ichthys LNG over the allegedly defective coating used on the Ichthys onshore project.

Japanese oil company INPEX established the Ichthys project in 1998 to connect gasfields off northwestern Western Australia with a gas processing facility in Darwin. The firm entered into a US\$13 billion contract with JKC — a joint venture between the Japanese JGC Corporation and Chiyoda Corporation and US-based engineering and construction company KBR — to construct the onshore LNG plant.

Thus far, the Ichthys project has been plagued with delays, cost blowouts, and legal battles.

## Access granted

JKC launched action against AkzoNobel and its subsidiary International Paint in September 2017 over alleged defects in its Intertherm 228 coating, used on pipework and equipment modules in the plant and which caused degradation and decolouration after use. JKC accuses AkzoNobel of misleading and deceptive conduct with respect to both the coating itself and the repair process that was later agreed to.

JKC claims the AkzoNobel parties then advised INPEX and JKC, in effect, that Intertherm 228 was not suitable for use in the manner it was used on the Ichthys onshore project, after which INPEX withdrew its approval for the repair regime and directed JKC to conduct rectification work.

After discovering documents from AkzoNobel within this dispute, JKC successfully applied to the court to use the documentation in any potential claims which it may face by INPEX or Ichthys LNG, of which INPEX owns 66.2 per cent.

Justice Banks-Smith said the documents would be relevant to separate advice JKC was obtaining from DLA Piper in relation to those potential future claims. The firm has sought an expert opinion from a coatings expert, including in relation to Intertherm 228.

“In my view, access to the Documents as proposed by JKC is likely to contribute to the separate advice and therefore the position as between INPEX and JKC, and is accordingly in the interests of justice as between those parties. The evidence ... persuades me that the provision of the Documents to the lawyers and experts engaged by JKC will enable the separate advice to proceed with the benefit of important information,” the judge said.

“Particularly in circumstances where copies of the Documents could in any event be sought by JKC through the use of other pre-trial tools, it seem (sic) to me to be sensible and in the interests of justice to grant the orders sought.”

The court also ordered a confidentiality regime on those documents which contained sensitive information belonging to AkzoNobel.

Although appearing in court, counsel for AkzoNobel neither opposed nor consented to JKC’s application to use the documents outside of the proceedings.

## Beset with troubles

The parties involved in the LNG project have faced a number of legal claims so far.

Engineering firm UGL, which was subcontracted along with US-based jointed venture partner CH2M Hill to build a combined cycle power plant on the Darwin premises, is facing a shareholder class action that accuses the company of breaching its continuous disclosure obligations.

The class action says UGL failed to inform shareholders that the power project was running behind schedule and would be subject to increased costs. According to the class action’s amended statement of claim, [UGL knew by February 2014 that a “substantial loss” of as high as \\$129 million](#) was looming.

UGL has admitted in its amended defence that it knew the project was behind schedule but said it had strategies designed to mitigate or recover slippages in place.

IMF Bentham, which is funding the class action, [could be set to gain up to 30 per cent of any settlement or judgment](#) through the common fund order approved by Justice Bernard Murphy in October last year.

In May this year, JKC lost its case against subcontractors CH2M, UGL and General Electric with Western Australia Supreme Court Chief Justice Peter Quinlan rejecting an application for declarations that its parent company guarantees were on a “pay now, argue later” basis.

CH2M, UGL and General Electric ceased construction on the power plant in January 2017, pulling their workers off the site. JKC is now seeking claims of up to US\$1.9 billion from the three subcontractors, with arbitration on which party in fact validly terminated the contract expected to begin in the first half of 2020.

In July and November 2018, JKC sent notices of demand to its guarantors to discharge certain liabilities of the subcontractors under the parent company guarantees. CH2M, UGL and General Electric denied that they were liable under these guarantees as JKC had not validly terminated the contract.

“[The] Parent Company Guarantees, on their proper construction, do not create a ‘pay now, argue later’ obligation. Rather, the defendants are entitled to assert any defence, set-off or counterclaim to a claim under the Parent Company Guarantees, including the claims made in the Notices of Demand,” Chief Justice Quinlan said.

As of December 2018, the cost of the entire Ichthys project was around US\$45 billion, an increase of US\$11 billion from when targets were initially set in 2012. The project deadline was also extended from late 2016 to October last year, when the first condensate and LNG shipments left the project’s facilities.

Ichthys is expected to remain in operation for 40 years, producing 8.9 million tonnes of LNG, 1.6 million tonnes of LPG, and 100,000 barrels of condensate each year.

JKC declined to comment on the judgment. INPEX has yet to respond.

JKC was represented by Martin Smith, instructed by solicitors with Solomon Brothers. AkzoNobel and International Paint were represented by Tessa Trend of Clayton Utz.

The case is [JKC Australia LNG Pty Ltd v AkzoNobel NV & Anor](#).

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