

INPEX, JKC settle spat over \$45B Ichthys LNG project



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Japanese oil and gas producer INPEX and contractor JKC Australia have settled all claims between them relating to the construction of the \$45 billion of Ichthys LNG project.

INPEX, which established the Ichthys project in 1998 to connect gasfields off northwestern Western Australia with a gas processing facility in Darwin, 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 lawsuits.

Since 2017, JKC has been locked in litigation in the Federal Court with AkzoNobel and a subsidiary over alleged defects in the Dutch paint company's Intertherm 228 coating, used on pipework and equipment modules in the plant, and in 2019 [won court approval to use documents](#) discovered in that case in any dispute with INPEX.

INPEX and JKC have now settled all disputes between them relating to the Ichthys LNG project, according to a December 1 judgment by Supreme Court of Western Australia Justice Jeremy Allanson in lawsuits brought by INPEX and JKC against their insurers. The companies have brought substantially identical indemnity claims against their insurers over the alleged defects in the coating used on the LNG project.

Under the settlement, which was made without admission of liability, the companies agreed to make efforts to maximise recovery from their insurers.

In his judgment, Justice Allanson denied a bid by the insurers to prevent INPEX from taking over JKC Australia's lawsuit against AkzoNobel. JKC [filed its own lawsuit against AkzoNobel](#) in the Federal Court in July.

AzkoNobel's Intertherm 228 coating allegedly caused degradation and discoloration to the Ichthys pipes after use. The project required 889km of subsea pipeline to connect the onshore liquefaction plant, near Darwin, with the offshore Ichthys field in the Timor Sea.

In their lawsuit against their insurers, filed in May 2020, INPEX and JKC claim the damages should be covered under the Construction RISKS Insurance Policy, under which they were both insured between November 16, 2012 and December 31, 2017.

Up until October 15, INPEX and JKC sought to settle the claims separately given their ongoing dispute regarding amounts payable under the engineering, procurement and construction contract for the liquefaction plant.

In his judgment, Justice Allanson found replacing JKC with INPEX to be the proper exercise of the court's discretion.

"I am satisfied that JKC and INPEX have entered agreements by which JKC has purported to assign its choses in action in these proceedings to INPEX," Justice Allanson said.

"The contractual provisions governing the relationship between INPEX as principal and JKC as contractor show, on the evidence now before the court, a sufficiently arguable case that, before the assignment, INPEX had a genuine commercial interest in the claim which JKC has now assigned to it."

The 23 named insurers, of which Allianz Australia is one, opposed the changes. They argued that substitution and consolidation were premature, risked creating prejudice to them and created difficulties for the court.

"At the heart of the dispute between the parties in this application was whether, were the court to allow the application, that would summarily determine the validity and enforceability of the assignment, and thus prejudice the defendants by locking them out from raising that issue," Justice Allanson said.

"The validity of the assignment, unless admitted, is an issue for trial ... INPEX will need to plead the assignment and, should it be in issue, establish the validity of the assignment at trial. In my opinion, an order under O18 r 7 would not obviate those requirements.

"I would not construe [the order to substitute one plaintiff for another] as requiring a final finding as to the validity of the assignment."

Justice Allanson said he did not consider the application premature. On the contrary, he said it was conducive to good case management to make the substitution before the pleadings were filed.

As to the consolidation, INPEX submitted it was desirable for the matters to be disposed of together in one pleading, and a single trial, given the pleadings were to include identical questions of law and fact.

"The primary argument in opposition to consolidation appeared to be the concern that the two claims, INPEX's claim as a named insured and that purportedly assigned to it by JKC, may not be identical," Justice Allanson said.

"I accept, however, the submission ... that the issue giving rise to the objection can be met by properly drawn pleadings.

"Although both actions were commenced in 2020, statements of claim have not been filed in either. It is, in my opinion, consistent with the objects set out in O 1 r 4A to immediately consolidate so that the pleadings and all further interlocutory processes will be in the one consolidated action."

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 2020, 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 was represented by Jenny Thornton, instructed by HFW Melbourne. INPEX was represented by Richard Price, instructed by Allen & Overy.

AIG Australia Pty Ltd, Allianz Australia Insurance Ltd, Tokio Marine & Nichido Fire Insurance Co Ltd, Somp Japan Insurance Inc, Aioi Nissay Dowa Insurance Company Ltd, Zurich Australian Insurance Ltd, HDI Global SE, XL Insurance Company SE, AAI Ltd, Chubb Insurance Australia Ltd, Swiss Re International SE, LLOYD's Syndicate, HDI Global Speciality SE, Great Lakes Insurance SE, Pan Insurance Designated Activity Company, Scor UK Company Ltd, XL Catlin Insurance Company UK Ltd, and Helvetia Schweizerische Versicherungs-Gesellschaft AG were represented by Todd Marskell and Hayden Fielder, instructed by Wotton + Kearney Lawyers.

Mitsui Sumitomo Insurance Company Ltd was represented by Baron Alder, instructed by Moray & Agnew Lawyers.

The insurance cases are JKC Australia LNG Pty Ltd v AIG Australia Ltd, CIV 1620 of 2020 and INPEX Operations Australia Pty Ltd v AIG Australia Ltd, CIV 1631 of 2020 in the Supreme Court of Western Australia.

The lawsuits against AkzoNobel in the Federal Court are [INPEX Operations Australia Pty Ltd & Anor v AkzoNobel N.V. & Ors](#) and [JKC Australia LNG Pty Ltd v AkzoNobel NV & Anor](#).