

## In The News

# Engineering Firm Hit With \$21M Suit Over Terminal Project

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*Law360*

By Michelle Casady

A company formed as a partnership between Kinder Morgan Energy Partners LP and Watco Companies LLC to get into the crude shipping business has filed a lawsuit in Texas state court, seeking more than \$21 million in damages stemming from the allegedly faulty design and construction of a crude-by-rail terminal.

In a petition filed Wednesday, that partnership, KW Express LLC, told the Harris County District Court that the mistakes made by Wilson & Company Inc. Engineers and Architects in designing and constructing the project also led to costly litigation with its other business partner in the project — Mercuria Energy Trading Inc. — and it is seeking to recover those losses as damages as well.

KW Express alleges that Wilson & Co. didn't complete both phases of the project within 13 months of the November 2012 kick-off date despite a contract guaranteeing that time frame.

"The design provided by Wilson was plagued with multiple errors that caused damages to be incurred by KWX including, but not limited to, costs of redesign and repair, cost overruns, litigation costs in litigation with [Mercuria], the customer of the terminal, and lost revenue," KW Express alleges in the petition.

In bringing claims for breach of contract, breach of warranty and negligence, KW Express told the court that the additional repairs and equipment to make the terminal functional cost \$10.1 million, the lost revenue because of those repairs totaled more than \$10.6 million and the litigation with Mercuria was more than \$942,000.

According to the lawsuit, KW Express contracted with Wilson in December 2012 to design and construct the terminal at the Greens Port Industrial Park in Harris County. The project was supposed to be completed in two phases — one within eight months and the other in 12 or 13 months.

But the work Wilson did was subpar, KW Express told the court, forcing it to hire another firm, Tulsa Engineering Alliance, to come in and make suggestions and repairs on how to make the facility fully operational. Specific issues included a defective vapor handling and venting system that Wilson designed, which restricted the flow rate of oil from the railcars, and also slowed down the pumps.

Other issues included Wilson's selection of an incorrect pump that created "a series of downstream issues that resulted in poor system performance," and its selection of an incorrect dock crane to handle hoses during the loading and unloading of the crude oil. Wilson was notified of the issue with the crane, KW Express alleges, but refused to pay to replace them.

Counsel for KW Express declined to comment Thursday and Wilson did not immediately return a message seeking comment.

KW Express is represented by D. Mitchell McFarland and Sameer S. Karim of Munsch Hardt Kopf & Harr PC.

Counsel information for Wilson & Company was not available Thursday.

The case is KW Express LLC v. Wilson & Company Inc Engineers & Architects, case number 2018-88233, in the 269th District Court in Harris County, Texas.

--Editing by Connor Relyea.

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