

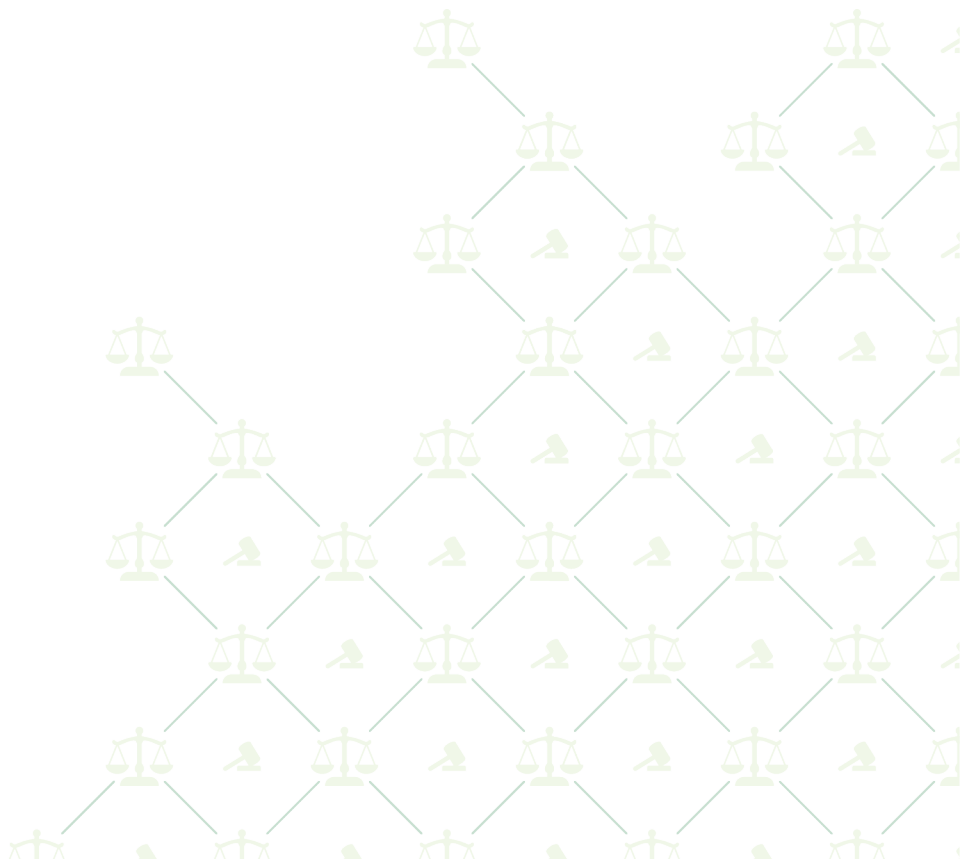
# UNREASONABLE EXTREME AND EXCESSIVE

**The Case for Overturning a North Dakota Court's  
\$345 Million Judgment Against Greenpeace**

**June 2026**

# Table of Contents

|  |    |
|--|----|
| 1. Executive summary.....  | 1  |
| 2. What is a “SLAPP”?.....   | 5  |
| 3. Basics of the lawsuit.....  | 7  |
| 4. What was the trial court’s final judgment?.....   | 9  |
| 5. What happened at Standing Rock in 2016? .....   | 10 |
| 6. Why did Energy Transfer target Greenpeace?.....   | 13 |
| 7. What happened before the trial to prejudice the outcome?.....   | 15 |
| 8. What defamation claims did the plaintiffs allege? .....   | 17 |
| 9. What tortious interference claims did the plaintiffs allege? .....  | 24 |
| 10. What property damage claims did the plaintiffs allege? .....   | 26 |
| 11. Can Greenpeace be punished for “nonviolent direct action”?.....  | 29 |
| 12. How did the court calculate that Greenpeace had caused<br>hundreds of millions of dollars in damages?..... | 33 |
| 13. Conclusion.....  | 35 |



# 1. EXECUTIVE SUMMARY

Between August 2016 and February 2017, tens of thousands of people came to North Dakota to protest a crude oil pipeline that a Texas-based corporation called Energy Transfer was building near the Standing Rock Sioux Tribe's reservation. The Tribe called for the protests due to concerns that the project — called the Dakota Access Pipeline — would threaten its drinking water supply, cultural heritage, and tribal sovereignty. Their efforts grew into the largest Indigenous-led protest movement in U.S. history and quickly attracted global attention.

The story of the Dakota Access Pipeline is complex. The protests were largely peaceful but had several moments of heightened tensions between some groups of protesters, local law enforcement, and the company's private security forces. People held sharply different views about what happened during the protests, especially during the confrontations, with both sides accusing the other of violence.

## **A North Dakota court has held the Greenpeace defendants fully responsible for the costs of protests that involved tens of thousands of people**

Soon after the pipeline became operational in 2017, Energy Transfer sued three nonprofit environmental organizations belonging to the Greenpeace network, accusing them of masterminding the protests.\* How the company intended to prove this allegation was unclear: the events that occurred at Standing Rock involved a complex web of thousands of people and organizations participating in, supporting, opposing, observing, surveilling, and policing the protests.<sup>1</sup> Yet almost a decade later, in February 2026, a North Dakota court held the three Greenpeace organizations fully responsible for the costs of the protests and ordered them to pay \$345 million to compensate the pipeline's developers.

## **The judgment punishes lawful protest activities**

The court's judgment is the result of one of the biggest and most flawed trials in North Dakota's history.<sup>2</sup> Based on a review of the trial history, our view is that the two plaintiffs, Energy Transfer LP and its affiliate Dakota Access LLC,<sup>†</sup> convinced the court to erroneously punish the defendants for constitutionally protected free speech and other lawful activities without evidence that the three nonprofit organizations had caused any harm. The judgment not only violates the U.S. Constitution and North Dakota law but also defies logic by holding Greenpeace fully responsible for every action, both lawful and unlawful, that occurred during the months of protests.

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\* In preparing this report, we relied on best available sources to track the arguments and testimony made during trial. While the trial was open to the public, the court denied requests by media organizations to livestream the trial, even though the court had the capacity to do so. This limited firsthand reporting of the trial. Over one year after the trial ended, the court has also not provided a transcript. As a result, we rely on a variety of sources to piece together what happened, including on-site reporting by the handful of journalists who attended the trial, statements by a trial monitoring committee, and references to trial testimony and depositions in court filings and trial analysis.

† We often refer to the plaintiffs collectively as Energy Transfer except where it is important to distinguish between the two.

This case is an example of a **strategic lawsuit against public participation (SLAPP)** — a retaliatory lawsuit to silence free speech — that has spiraled out of control.<sup>3</sup> In this report, we provide an overview of the numerous ways in which the court mishandled this case, causing significant and undeserved harm to the defendants.

## Two of the defendants played only a minor role in the protests, while the third had no role

Specifically, the lawsuit targets three entities from Greenpeace, a global network of 25 independent environmental organizations: **Greenpeace, Inc.** (a nonprofit organization based in the USA), the **Greenpeace Fund** (a nonprofit fundraising and grantmaking entity based in the USA), and **Greenpeace International** (a nonprofit organization based in the Netherlands).<sup>‡</sup>

Greenpeace, Inc. played a minor role in the protests. Six of its employees were among the thousands who traveled to Morton County, North Dakota. No evidence emerged at trial implicating anyone from Greenpeace, Inc. or any of the Greenpeace organizations in any wrongful activity. Yet the court held Greenpeace, Inc. liable for over \$235 million.

Greenpeace International did not send any staff to North Dakota. Its only protest-related action was to add its name to a letter written by a Dutch nonprofit organization and signed by over 500 other nonprofit organizations, expressing concerns to the commercial banks that financed the project.<sup>4</sup> For signing this letter, the court held Greenpeace International liable for over \$65 million.

While Greenpeace Fund shared some overlapping staff with Greenpeace, Inc., the entity itself had no connection to the protests whatsoever. Nevertheless, the court held it liable for over \$64 million.

## This case should have been dismissed before going to trial

At the end of the trial, the jury awarded the plaintiffs \$666 million in damages.<sup>5</sup> The court later reduced that amount to \$345 million but did not resolve the fundamental errors that occurred on its watch.<sup>6</sup> This report describes a few of the court's errors that, if handled appropriately, should have resulted in the case being dismissed before it ever went to trial:

- The court allowed the trial to take place in a venue (Morton County, North Dakota) where the defendants were unable to have a fair trial, both because of the sheer number of people in the jury pool who had direct experiences with the protests, and because of several apparent efforts to influence the jury pool in the plaintiffs' favor before the trial began.
- The court held the defendants liable for nearly \$50 million for "defamation" even though the statements in question were constitutionally protected free speech, never shown to cause any harm to the plaintiffs, and never proven false.

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<sup>‡</sup> In public statements, Greenpeace, Inc. and Greenpeace Fund — the two U.S. based organizations in the Greenpeace network — are often referred to collectively as "Greenpeace USA."

- The court held the defendants liable for over \$143 million for “tortious interference with business relations” as punishment for project delays that were neither caused by the defendants nor caused by torts.
- The court held the defendants liable for over \$152 million for alleged property damages, even though Energy Transfer produced no evidence linking the defendants to any unlawful activities and made no distinction between lawful and unlawful protest activities when calculating its damages.

## A protest is not automatic grounds for liability in a civil lawsuit, regardless of whether it causes disruptions or inconveniences for nearby residents

Many protest activities are constitutionally protected forms of free speech and freedom of assembly. Merely participating in protests or speaking out against a controversial, high-profile development project is not wrongdoing — and any inconvenience caused by protected First Amendment activity is not necessarily grounds for liability. To win in court, the plaintiff needs to demonstrate that it suffered harm that was caused by wrongdoing committed by the defendant.

Even in an era where people are keen to fight and punish those who have different ideological views from their own, this lawsuit stands out as an egregious example of injustice. It never should have gone to trial. Instead, an error-prone court created the conditions for a verdict that the Greenpeace defendants rightly described as “unreasonable, extreme, and excessive.”<sup>7</sup>

### Box 1: Signs of a Mistrial

|     |  |
|-----|--|
| 50+ | The number of errors by the trial judge that the Greenpeace defendants identified, many of which are serious enough to be grounds for a mistrial. <sup>8</sup>                           |
| 0   | The number of acts of wrongdoing by the defendants that law enforcement witnesses identified during trial. <sup>9</sup>  |
| 0   | The number of acts of wrongdoing by the defendants that Energy Transfer’s own management identified during trial. <sup>10</sup>  |
| 0   | The number of acts of wrongdoing by the defendants identified by Energy Transfer’s private security firms after conducting around-the-clock surveillance of the protests. <sup>11</sup>  |
| 0   | The number of minutes that Energy Transfer’s public relations firms spent trying to repair the company’s image because of the defendants’ allegedly defamatory statements. <sup>12</sup> |

## Box 1: Signs of a Mistrial (Continued)

**\$32.7 million**

The amount that the court ordered Greenpeace, Inc. to pay because one of its employees said she ran across an easement (private property that the plaintiffs did not own) holding a windsock.<sup>13</sup> There was no evidence that this action caused any damage.

**\$46.9 million**

The amount that the court awarded one of the plaintiffs, Energy Transfer LP, in property damages even though it did not own any property or equipment, or even have any easements, at the protest site.<sup>14</sup>

**\$71.6 million**

The amount that the court awarded Energy Transfer LP in damages for tortious interference in contracts, even though it was not a party to the contracts or loans that were allegedly “interfered” with.<sup>15</sup>

**\$64.4 million**

The amount that one of the defendants, Greenpeace Fund, was ordered to pay even though it had absolutely zero involvement in the Dakota Access Pipeline protests.<sup>16</sup>

**\$65.2 million**

The amount that another one of the defendants, Greenpeace International, was ordered to pay simply for signing its name to a letter to Citigroup alongside 500+ other nonprofits. Citigroup and other commercial banks regularly receive such letters from nonprofits.<sup>17</sup>



Protest against the Dakota Access Pipeline in Minnesota in 2017. © Photo by Fibonacci Blue

## 2. WHAT IS A “SLAPP”?

Energy Transfer’s lawsuit against Greenpeace is an emblematic example of a SLAPP. The nonpartisan Uniform Law Commission describes SLAPPs as the use of the civil litigation system “not to seek redress or relief for harm or to vindicate one’s legal rights, but rather to silence or intimidate citizens by subjecting them to costly and lengthy litigation.”<sup>18</sup> SLAPPs target people’s constitutional rights to free speech, freedom of assembly, freedom of the press, and freedom of association.

Energy Transfer included disclaimer language in its complaint that appears intended to deflect allegations that its lawsuit is a SLAPP. The plaintiffs wrote:

“Energy Transfer and Dakota Access in no way seeks to limit or threaten anyone’s lawful exercise of their rights to free expression of their political and other beliefs and opinions, or in any way suppress political debate over important environmental issues. Defendants’ actions, however, were not protected free speech or expression. Instead, they were designed to inflict damage, cause delay, defame Energy Transfer and Dakota Access, and disrupt their operations as much as possible. It is for all of this extensive, unjustified, and unlawful conduct... that Plaintiffs seek to vindicate their own legal rights.”<sup>19</sup>

However, as described below, the details of their lawsuit tell a different story. In a 2022 report, we analyzed 152 cases over the previous decade where the fossil fuel industry had used SLAPPs and other judicial harassment tactics in attempts to silence or punish its critics in the United States. We described SLAPPs as lawsuits having one or more of the following telltale signs:<sup>20</sup>

- **Nature of the defendant:** SLAPPs usually target activists, nonprofit organizations, journalists, media organizations, and concerned citizens who speak up about a matter of public concern.
- **Track record of the plaintiff:** Certain individuals, companies, and law firms have a track record of repeatedly using SLAPPs and other judicial harassment tactics against their critics.
- **Nature of the activity targeted:** SLAPPs often accuse the defendant of a “wrongful activity” that is actually an activity protected under the First Amendment of the U.S. Constitution, such as journalism or nonviolent protest.
- **Power imbalance between the parties:** SLAPPs often occur when the plaintiff has significantly more resources for a legal battle than the defendant. This includes financial resources, as well as political resources that can be used to influence the behavior of law enforcement and other government officials.

- **Disproportionate claims of damages:** SLAPP filers often seek disproportionately high damages from the defendant to “send a message,” even if they do not have evidence to show that they suffered any harm. In cases where the defendant caused minor damage during civil disobedience, the SLAPP filer often seizes the opportunity to “destroy” their opponent and put them at risk of losing their homes and life savings.
- **Use of the litigation process itself to punish the defendant:** Litigation is often costly and psychologically stressful. Legitimate plaintiffs typically want to conclude their cases as quickly and efficiently as possible because their goal is to win their case. Many SLAPP filers, however, take advantage of the stresses of this process to drag out the case as long as possible, drive up the costs for the defendant, embarrass the defendant in public, or bankrupt the defendant.
- **Attempts to create a broader chilling effect:** SLAPP filers often try to use a lawsuit to send a message to a broader community of people by naming multiple people who are only loosely connected to the alleged wrongdoing as defendants, sending subpoenas to a wide range of people involved in a network or community, or singling out members of the community who are most vulnerable to intimidation due to their personal circumstances.

Across the country, 40 states have already passed anti-SLAPP laws on a bipartisan basis – with South Dakota becoming the most recent addition in March 2026. However, North Dakota has no such protections in place.<sup>21</sup> The dangers of not providing anti-SLAPP protections for defendants were on full display in this case.<sup>22</sup>



*A group of protesters gather outside the Morton County Sheriff office in Mandan, ND to wait for their friends and fellow protesters to be released from jail in October 2016. © Photo by Cayla Nimmo*

### 3. BASICS OF THE LAWSUIT

**Date filed:** Energy Transfer sued the three Greenpeace defendants, alongside several others, in federal court on August 22, 2017. The federal court dismissed the case on February 14, 2019, after finding it meritless.<sup>23</sup> The company then refiled the case in North Dakota state court on February 21, 2019.

**Plaintiffs:** The plaintiffs in the lawsuit are Energy Transfer LP and Dakota Access LLC, an entity partially owned by Energy Transfer.

Energy Transfer LP is a Texas-based corporation that has faced allegations of having the overall worst spill record among hazardous liquid pipeline operators in the country,<sup>24</sup> violating numerous health and safety regulations,<sup>25</sup> and participating in price gouging during a natural disaster in Texas,<sup>26</sup> among other controversies. In 2022, two of the company's subsidiaries were convicted of 23 criminal violations in Pennsylvania,<sup>27</sup> leading the U.S. Environmental Protection Agency to propose debarring Energy Transfer from federal contracts.<sup>28</sup>

**Defendants:** Greenpeace is a network of 25 independent environmental organizations around the world with a "more than 50-year commitment to non-violence, no property destruction, and bearing witness to injustice."<sup>29</sup> The defendants in this case include three separate Greenpeace legal entities: Greenpeace, Inc. (a nonprofit organization based in the USA), the Greenpeace Fund (a nonprofit fundraising and grantmaking entity based in the USA), and Greenpeace International (a nonprofit organization based in the Netherlands).<sup>30</sup>

**Claims:** According to the plaintiffs, "Defendants' unlawful acts include violent attacks against Plaintiffs' employees and property, soliciting money for and providing funding to support these illegal attacks, inciting protests to disrupt construction, and a vast, malicious publicity campaign against Energy Transfer and Dakota Access."<sup>31</sup>

Energy Transfer's allegations focused on three buckets of claims: (1) defamation, (2) tortious interference with business relations, and (3) property damage, including the company's on-the-ground security costs in responding to the protest.<sup>32</sup> As detailed in this report, none of the plaintiffs' allegations met the basic requirements for tort liability and should have been dismissed by the court before going to a jury.<sup>33</sup>

**Key dates in the case:** The trial began on February 24, 2025, in Mandan, Morton County. On March 19, 2025, the jury announced its verdict in favor of Energy Transfer, finding that the Greenpeace defendants must pay the company \$666 million in damages.<sup>34</sup> In October 2025, the court reduced the amount to \$345 million.<sup>35</sup> On February 27, 2026, the court issued a judgment affirming the verdict.<sup>36</sup> On March 27, 2026, the defendants motioned for a new trial, citing "numerous egregious flaws."<sup>37</sup>

**Next steps, as of May 2026:** In March 2026, the Greenpeace defendants filed a motion for a new trial and announced plans to appeal the judgment if the trial judge did not grant the motion.<sup>38</sup> The Greenpeace defendants also announced plans to appeal to the North Dakota Supreme Court, and if necessary, the U.S. Supreme Court. If the judgment is not overturned, it will become one of the largest verdicts in North Dakota history and one of the most damaging SLAPPs in U.S. history.

Meanwhile, Greenpeace International is also challenging the judgment under the European Union’s anti-SLAPP directive, which protects European citizens from being targeted with SLAPPs in foreign jurisdictions.<sup>39</sup>



*Sections of pipe for the Dakota Access Pipeline lay next to State Road 6 south of Mandan, ND in October 2016.*  
© Photo by Cayla Nimmo

## 4. WHAT WAS THE TRIAL COURT'S FINAL JUDGMENT?

At the end of the trial, the jury chose to award \$666 million in damages to the plaintiffs.<sup>40</sup> The court later reduced that amount to \$345 million.

### Box 2: Summary of the Court's Judgment Against the Greenpeace Defendants<sup>41</sup>

| Type of Claim  | Alleged Wrongdoing   | Damages awarded to Energy Transfer | Damages awarded to Dakota Access LLC |
|--|--|------------------------------------|--------------------------------------|
| <b>Defamation</b>                                    | For allegedly making nine public statements that Energy Transfer considered false and malicious  | Each defendant: \$8,326,425        | Each defendant: \$8,326,425          |
| <b>Tortious interference with business relations</b> | For allegedly delaying the start date of the pipeline and the refinancing of a bank loan   | Each defendant: \$23,852,125       | Each defendant: \$23,852,125         |
| <b>Property damage</b>                               | For allegedly coordinating unlawful activities at the protests through nonviolence training, funding for Indigenous trainers, and other activities | Greenpeace, Inc.: \$46,452,093     | Greenpeace, Inc.: \$104,955,253      |
|  |  | Greenpeace Int'l: \$439,895        | Greenpeace Int'l: \$439,895          |
|  |  | Greenpeace Fund: \$0               | Greenpeace Fund: \$0                 |
| <b>Total Amount</b>                                  |  | <b>\$143,427,638</b>               | <b>\$201,930,798</b>                 |

## 5. WHAT HAPPENED AT STANDING ROCK IN 2016?

The Dakota Access Pipeline project triggered the largest Indigenous-led protest movement in U.S. history.<sup>42</sup> While the pipeline was still under construction, the Standing Rock Sioux Tribe began raising concerns that the project endangered their drinking water supply and crossed through land that had been granted to the Great Sioux Nation in their treaties with the U.S. government (often referred to as “unceded” land).<sup>43</sup>

In April 2016, Standing Rock Sioux tribal representatives set up a prayer camp near the planned construction site and began to protest.<sup>44</sup> Youth Indigenous activists organized a 500-mile relay run to deliver a letter to the U.S. Army Corps of Engineers office in Nebraska.<sup>45</sup> The Standing Rock Sioux Tribe later filed a lawsuit against the Army Corps to stop it from providing a permit needed for the project to move forward.<sup>46</sup>

The Indigenous representatives and their allies called themselves Water Protectors and treated their protest activities as a sacred ceremony.<sup>47</sup> For many, the protests symbolized bigger societal issues such as the struggle for Indigenous sovereignty, the long history of Indigenous land being taken without consent, and the protection of Mother Earth.

### The Standing Rock Sioux Tribe’s protest grew into an international movement

The Tribe’s actions attracted global attention, and tens of thousands of people traveled to Morton County to join the protests in the summer and fall of 2016.<sup>48</sup> Representatives of over 300 tribal nations participated, as did members of faith-based organizations, veterans groups, nonprofit organizations, and others.<sup>49</sup> Media outlets widely covered the protests; even the United Nations sent a team to investigate allegations of the use of excessive force by law enforcement.<sup>50</sup>

While the protests had widespread support both nationally and internationally, many of the local, non-Indigenous residents of Morton County disapproved.<sup>51</sup> Residents said they experienced significant disruptions to everyday life due to an influx of people from out-of-state, traffic blockages, damages to vehicles and property, and fear for their safety.<sup>52</sup> Many law enforcement officers and construction crew members who worked on the pipeline — and participated in confrontations with the protesters — lived in Morton County.

## Tensions grew between protesters and law enforcement

The protests were mostly peaceful but had several moments of dramatic tension between some groups of protesters and security units, especially the Morton County sheriff's office and Energy Transfer's private security contractors. High-profile confrontations between protesters and security units occurred on September 3,<sup>53</sup> October 27,<sup>54</sup> and November 20, 2016.<sup>55</sup> Meanwhile, Energy Transfer's private security contractors reportedly conducted around-the-clock surveillance and infiltration of the protest camps.<sup>56</sup> North Dakota regulators accused one of these private security contractors, TigerSwan, of operating without a license.<sup>57</sup>

## Public debates ensued over which side was being “violent”

Energy Transfer's contractors also worked to portray the protests as a national security threat. For example, journalists for The Intercept and Grist reported that TigerSwan, in collaboration with lobbyists at the National Sheriffs' Association, created a narrative comparing the Dakota Access Pipeline protesters to jihadists and encouraged the law enforcement response to the protest to draw upon tactics from the federal government's counterterrorism and counter-insurgency operations in the Middle East.<sup>58</sup>

In reality, the protests' Indigenous leaders actively encouraged nonviolence, but as the protests gained public attention, diverse groups of people arrived at the camps.<sup>59</sup> Law enforcement officers alleged that some participants committed illegal acts — such as vandalism of construction vehicles and pipeline equipment, threats to police and pipeline employees that included at least one death threat, some firearms-related offenses, trespass on private property, and roadblocks that impeded access to construction sites.<sup>60</sup>

At the same time, both the Standing Rock Sioux Tribe and media outlets alleged that law enforcement officers and private security forces injured protesters and used inappropriate levels of force on multiple occasions (see below for more details).<sup>61</sup> Journalists recorded video of some of the more intense moments, which were viewed widely around the world.<sup>62</sup>

Public debates ensued over which side was being “violent” during the confrontations between protesters, law enforcement, and private security. For example, Indigenous Water Protectors and their allies widely accused law enforcement of using violence against protesters. The Standing Rock Sioux Tribe considered protesters' acts of civil disobedience — such as trespassing and blocking traffic in some cases — to be nonviolent, but considered acts of property destruction and bodily harm by protesters to be unacceptable.<sup>63</sup> Meanwhile, Energy Transfer's agents, law enforcement officers, North Dakota politicians, and Morton County's non-Indigenous residents tended to view all illegal acts by protesters as “violence,” including misdemeanors such as trespassing and blocking traffic.<sup>64</sup> This debate later became relevant to the lawsuit.

## **Greenpeace joined the protests in a limited, supporting role**

According to Energy Transfer’s own trial witnesses, the protests grew dramatically in size and attracted widespread media attention before Greenpeace, Inc. staff first arrived on September 5, 2016.<sup>65</sup> Media coverage consistently and unambiguously reported that the protests were Indigenous-led, even though — as in any large gathering — numerous activities occurred without the authorization or knowledge of the protest leaders.

Indigenous elders invited the nonprofit organization Indigenous Peoples Power Project (IP3), with funding support from Greenpeace, Inc., to provide training to help de-escalate tensions and train participants on “nonviolent direct action” tactics — a longstanding tradition in social justice movements dating back to Martin Luther King Jr., Rosa Parks, and others.<sup>66</sup>

During the trial, Energy Transfer’s witnesses, including law enforcement officers who were on the ground at the protests, struggled even to recall Greenpeace’s presence at the protests and were unable to point to a single instance of harm caused by the defendants. Nor did Energy Transfer mention any of the Greenpeace defendants in any of its internal documents or board of directors meeting minutes from the time of the protests.<sup>67</sup>

## **Ten years later, the Dakota Access Pipeline remains controversial**

Although the Dakota Access Pipeline has now been operational for nearly a decade, it continues to stir controversy. Energy Transfer eventually received permission from the first Trump administration to proceed with construction of the pipeline through an executive order.<sup>68</sup> The pipeline was completed in April 2017 but continued to face legal challenges, including a federal court ruling in 2020 that invalidated its easement to operate on federal lands.<sup>69</sup> Indigenous rights advocates have raised concerns that the pipeline operated for years without a permit or a completed environmental impact study.<sup>70</sup>

Allegations have also continued to arise about the pipeline’s safety record. In January 2018, Alleen Brown reported in *The Intercept* that the Dakota Access Pipeline leaked at least five times in 2017 during its first half-year of operation.<sup>71</sup> In August 2025, Brown reported for *Drilled Media* that the pipeline had already experienced at least 13 leaks since beginning operations.<sup>72</sup> In April 2026, the Water Protector Legal Collective reported that the pipeline had experienced 16 spills.<sup>73</sup>

Energy Transfer’s SLAPP against Greenpeace has drawn widespread criticism among Indigenous communities, not only because of the baseless allegations but because the lawsuit is viewed as an attempt to rewrite the history of the Indigenous-led protest movement and falsely portray it as an event that was masterminded by outside organizations.<sup>74</sup>

## 6. WHY DID ENERGY TRANSFER TARGET GREENPEACE?

In August 2017, a few months after the pipeline became operational, Energy Transfer filed a \$900 million lawsuit in federal court against the Greenpeace defendants and a few individual activists, alleging that Greenpeace was the leader of a “network of putative not-for-profits and rogue eco-terrorist groups” and should be punished under federal anti-racketeering law.<sup>75</sup> The initial lawsuit was an imitation of another company’s effort to target the same three Greenpeace defendants. The previous year, one of the same law firms representing Energy Transfer also helped a Canadian logging company, Resolute Forest Products, to bring a similar case.<sup>76</sup> A federal court eventually dismissed that lawsuit and ordered the company to reimburse the defendants for almost \$1 million in legal expenses.<sup>77</sup>

### North Dakota does not have protections against SLAPP lawsuits

A federal court also dismissed Energy Transfer’s initial federal lawsuit in February 2019 after finding it meritless,<sup>78</sup> but the company then refiled the case in North Dakota state court one week later.<sup>79</sup> Many states have laws to protect defendants from SLAPP lawsuits such as this one — but North Dakota does not.<sup>80</sup>

While we cannot be sure of Energy Transfer’s exact motivations for bringing this lawsuit, evidence suggests that it hoped to create a chilling effect among other would-be protesters of oil and gas pipeline projects. In a 2017 interview with KVLV Valley News Live, for example, the company’s chief executive Kelcy Warren said: “Could we get some monetary damages out of this thing, and probably will we? Yeah, sure. Is that my primary objective? Absolutely not. It’s to send a message — you can’t do this, this is unlawful, and it’s not going to be tolerated in the United States.”<sup>81</sup>

Energy Transfer might also be attempting to repair its reputation after the controversies surrounding the Dakota Access Pipeline.<sup>82</sup> For this lawsuit, the company hired a law firm that has a track record of helping corporate clients repair their reputations after public controversies by combining aggressive litigation with public communications campaigns.<sup>83</sup>

### Energy Transfer never provided any specific allegations against the defendants

Greenpeace staff reported being surprised that they were targeted; they considered themselves to have played only a minor, supporting role at the protests.<sup>84</sup> Energy Transfer’s own management team and trial witnesses also appeared unsure as to why Greenpeace was being targeted. When the company’s chief executive testified at trial via pre-recorded deposition, he was unable to name any specific allegations of wrongdoing by Greenpeace and managed to name only examples of (lawful) activities by another, unrelated environmental nonprofit organization.<sup>85</sup> The same was true

with other Energy Transfer witnesses who testified — none were able to point to any specific acts of wrongdoing by Greenpeace that resulted in harm to the company, let alone evidence that Greenpeace coordinated any of the protests.

## The plaintiffs used an “outside agitators” narrative to build a conspiracy theory

During the trial, the company’s lawyers falsely claimed that Greenpeace was the behind-the-scenes leader of the protests — that it “took a small, disorganized, local issue and exploited it to shut down the Dakota Access Pipeline and to promote its own selfish agenda.”<sup>86</sup> Energy Transfer argued that Greenpeace should therefore be responsible for all of the company’s protest-related expenses.

This narrative appealed to the Morton County jury, whose community widely believed that “out-of-state agitators” rather than locals were responsible for what they had experienced.<sup>87</sup> These perceptions are not surprising: not only is the “out-of-state agitator” trope a common strategy for discrediting protests, but investigative reporters uncovered documentation showing that Energy Transfer’s contractors and lobbyists for the National Sheriffs’ Association deliberately spread messaging that focused local residents’ anger on those who joined the protests from out-of-state.<sup>88</sup>

It took just a few extra nudges from Energy Transfer to convince the jury that the “out-of-state agitators” were organized and led by the Greenpeace defendants. The jury bought into Energy Transfer’s conspiracy theory, reaching a verdict based on speculation rather than actual evidence, in violation of North Dakota law.



October 2016, construction resumes on the Dakota Access Pipeline south of Mandan, ND along State Road 6.  
© Photo by Cayla Nimmo

## 7. WHAT HAPPENED BEFORE THE TRIAL TO PREJUDICE THE OUTCOME?

According to the U.S. and North Dakota constitutions, defendants have a right to a fair trial, which includes having their cases heard before an impartial jury. Jurors face an increased risk of being unable to provide a fair trial when there are irregularities in court proceedings, when they are exposed to outside influence or prejudicial information, when people with prior personal knowledge about the case are seated on the jury, and when they are provided with inaccurate or confusing jury instructions, among other factors.<sup>89</sup> Several of these elements were present in this case.

### **Morton County was unable to provide an impartial jury for this case**

Even before the trial began, signs emerged that the Greenpeace defendants would not be able to have their case heard before an impartial jury if the trial took place in Morton County. In June 2019, for example, three months after filing the lawsuit, Energy Transfer made a splashy \$3 million donation to the town of Mandan, where the Morton County courthouse is located, “to help fund improvements at the Morton Mandan Public Library and Main Street parks that function as community gathering spaces.”<sup>90</sup> This donation presumably helped to build goodwill and name recognition with local residents. At least one potential juror later referenced this donation during the jury selection process.<sup>91</sup>

In 2022, at the request of the defendants, an organization called the National Jury Project conducted a survey of people in Morton County who were eligible to serve on a jury. Of the 150 people who participated in the survey, 100% were aware of the Dakota Access Pipeline protests, and 97% said they could not be a fair or impartial juror for this case. More than half said they had been personally affected by the protests or knew someone who had.<sup>92</sup> These results illustrated the improbability of finding impartial jurors in Morton County.

Impartiality also proved to be a challenge with the court itself. All judges in the district court for Morton County recused themselves due to conflicts of interest. A judge had to be assigned from another part of the state.<sup>93</sup> Facing such a significant risk of bias in Morton County, the defendants requested a change of venue to another county, but the North Dakota Supreme Court denied the request without explanation.<sup>94</sup>

### **A pro-Energy Transfer influence operation took place before the trial**

In October 2024, a few months before the trial began, residents in Morton County began receiving a mailer called “Central ND News,” which had the appearance of a local newspaper. The mailer included articles favorable to Energy Transfer and critical of the Dakota Access Pipeline protests.<sup>95</sup> County residents also reported receiving unsolicited text messages with links to Central ND News articles.<sup>96</sup>

The defendants submitted evidence to the court alleging that Energy Transfer had funded the mailer and asked the court for permission to conduct discovery to investigate whether this was an improper jury pool influence operation.<sup>97</sup> The trial judge refused the request.

Residents reportedly continued to receive mailers from Central ND News, including one that arrived less than a week before the trial began.<sup>98</sup> During the trial, Central ND News reportedly continued publishing articles, including several that attempted to discredit reporters who were covering the trial.<sup>99</sup>

Pro-Energy Transfer advertisements also circulated in Morton County in the weeks before the trial. Social media advertisements reportedly criticized Greenpeace while promoting Energy Transfer's positive impact on the Morton County community.<sup>100</sup> Energy Transfer also published a commercial on local television and on YouTube called "Energy Transfer Proudly Operates in North Dakota with the Dakota Access Pipeline."<sup>101</sup>

Morton County residents noticed the information campaigns. One potential juror brought a copy of the mailer to the courtroom because he considered it to be relevant to the case; that person said that they agreed with Central ND News' perspective.<sup>102</sup> Seven potential jurors said they had seen the television commercial.<sup>103</sup>

## **Most prospective jurors acknowledged the challenge of being impartial**

Before the trial began, prospective jurors openly acknowledged the challenges they faced in remaining unbiased in this case. Journalist Alleen Brown, who observed the trial, reported in *Grist* that one potential juror said, "I think you'll have a tough time finding people completely unbiased on [the Standing Rock protests], because it affected everyone." When a Greenpeace lawyer asked who felt the same way, nearly every potential juror raised their hands.<sup>104</sup>

Before the trial began, the prospective jurors filled out questionnaires designed to assess their impartiality. According to the Greenpeace defendants: "The juror questionnaires aligned with the [National Jury Project] survey results: many Morton County residents would not be able to set aside their personal experiences to decide the case fairly and impartially. Of the 86 prospective jurors who completed questionnaires, 65 of them (74%) indicated they have personal knowledge or opinion of the protests. Most of the prospective jurors had negative opinions of Greenpeace Defendants, organizations that oppose the use of fossil fuels, and/or protests in general."<sup>105</sup>

With this combination of factors – the personal experiences of the jurors, Energy Transfer's donation to the community, the apparent influence operation in Morton County, and a pro-Energy Transfer advertising campaign right before the trial – the Greenpeace defendants faced an uphill battle from the opening minutes of the trial in February 2025. By the time the court sent the jury into deliberations in mid-March, equipped with a set of jury instructions written by Energy Transfer's lawyers, the defendants' fate was sealed.<sup>106</sup>

## 8. WHAT DEFAMATION CLAIMS DID THE PLAINTIFFS ALLEGE?

Energy Transfer initially claimed that the Greenpeace defendants published 82 defamatory statements in a “misinformation campaign” that allegedly delayed the company’s refinancing of its bank loans and forced it to hire public relations firms to rehabilitate its reputation. The plaintiffs also claimed that “in or around August 2016, in response to the Defendants’ misinformation campaign, thousands of protestors from around the country and the world traveled to North Dakota to join what to date had been small, local protests against [the Dakota Access Pipeline].”<sup>107</sup> The evidence did not support these allegations.

### The defamation claims focused on nine statements

By the time the case went to trial, Energy Transfer had reduced its claims to nine statements — seven by Greenpeace, Inc. and two by Greenpeace International.<sup>108</sup> Greenpeace, Inc. made the first of these statements on November 7, 2016, months after the supposed “misinformation campaign” brought thousands of people to North Dakota around August 2016.<sup>109</sup> The timing of the statements alone should have been enough to disqualify the claims.

The allegedly defamatory statements were published on Greenpeace, Inc. websites in 2016-2017 and in two letters written by the Dutch nonprofit BankTrack that were sent to Energy Transfer’s banks in November 2016 — one written on November 7 (28 organizations signed this letter alongside the author) and one written on November 30 (505 organizations signed this letter alongside the author).<sup>110</sup> Greenpeace, Inc. signed both letters, and Greenpeace International signed onto the second letter.

The statements covered three topics: (1) whether the pipeline crosses tribal lands, (2) whether Energy Transfer’s private security forces, and public enforcement units working alongside the company, had used extreme violence against peaceful protesters, and (3) whether Energy Transfer deliberately desecrated cultural sites of importance to the Standing Rock Sioux. (See Box 3.)

The jury found all three Greenpeace defendants liable for defamation for each of the nine statements (including Greenpeace Fund, which did not make any of the statements).<sup>111</sup>

## Box 3: The Nine Allegedly Defamatory Statements

During the trial, the court asked the jury to deliberate on nine statements made by the Greenpeace defendants, which are reprinted below from the jury verdict form.<sup>112</sup>

### Whether the pipeline crosses tribal lands

- “It’s an important step that Nordea put its foot down and now has specific requirements that the oil pipeline not go through the Standing Rock Sioux Tribe’s land. It sends a clear signal to the world that the rights of Indigenous peoples must be respected.”
- “Given that Indigenous rights are presumed to be respected by the [Equator Principles Financial Institutions],...it is for us inexplicable that...gross violations of Native land titles...and the desecration of burial grounds have not been identified early on as reasons for [BBVA] to not provide funding for this project.”
- “For months, the Standing Rock Sioux have been resisting the construction of a pipeline through their tribal land and waters that would carry oil from North Dakota’s fracking fields to Illinois.”

### Whether the company’s agents used extreme violence against peaceful protesters

- Energy Transfer “us[ed] pepper spray and attack dogs on peaceful Water Protectors and pipeline opponents.”
- “[P]eaceful, nonviolent encampment on Standing Rock Sioux Tribal land in the path of the pipeline [and] Water Protectors...have been met with extreme violence, such as the use of water cannons, pepper spray, concussion grenades, tasers, LRADs (Long Range Acoustic Devices), and dogs, from local and national law enforcement, and Energy Transfer Partners and their private security.”
- “For months, the Standing Rock Sioux and allies have been peacefully protesting the crude oil pipeline, but have been met with aggression and violence from Dakota Access private security and construction crews.”

### Whether the company deliberately desecrated cultural sites

- Energy Transfer “damag[ed] at least 380 sacred and cultural sites along the DAPL pipeline route.”
- “DAPL personnel deliberately desecrated documented burial grounds and other culturally important sites.”
- “DAPL personnel deliberately desecrated documented burial grounds and other culturally important sites.” (This statement was included twice in the jury verdict form.)

## **The plaintiffs' claims did not meet the basic test for defamation**

To win a defamation claim, the plaintiffs must prove several elements in court. First, defamation applies only to assertions of fact made by the defendants. Statements that are opinions, especially opinions about high-profile public figures on high-profile topics that are already widely debated, are constitutionally protected free speech and cannot be defamatory. Second, the plaintiffs bear the burden of proving that the factual statements are false. Truthfulness is a defense to defamation.

As Greenpeace has alleged in its post-trial motions, and as described in more detail below, the plaintiffs failed to prove the basic elements of its defamation claims. All the defendants' statements were opinions on topics that were already subject to significant public debate.

Furthermore, Energy Transfer did not prove any of the statements false. Rather than proving that the defendants' statements were false, Energy Transfer's lawyers reportedly asked the jury to deliberate on modified versions of the statements that were never actually made by the defendants — and the court took no actions to stop this from happening. In its March 2026 motion for a new trial, the Greenpeace defendants raised this concern, saying that Energy Transfer “attacked strawman statements, conducting weeks of trial on statements no Greenpeace Defendant had actually made.”<sup>113</sup>

## **The jury found the defendants liable for saying the pipeline crossed the tribal “reservation,” but Greenpeace actually said the pipeline crossed tribal “lands”**

During the trial, Energy Transfer falsely alleged that the Greenpeace defendants said that the pipeline ran through the Standing Rock Sioux Tribe's reservation or property, and that these statements were false because the pipeline ran a half-mile outside the reservation's boundaries.<sup>114</sup> This was a strawman tactic: Greenpeace actually stated that the pipeline ran through tribal lands, which has a completely different meaning from reservation in this particular context.<sup>115</sup>

While the pipeline did not run through the current boundaries of the Tribe's reservation, it did run through land that the tribe has contested for generations. In the mid-1800s, the U.S. government granted the land to the Tribe in two treaties and later failed to enforce the treaty when settlers encroached on the territory.<sup>116</sup> The Tribe maintains its rights to this land and refers to it as “unceded territory.” One of Energy Transfer's key witnesses, Morton County Sheriff Kyle Kirchmeier, also described the land as “unceded territory” in his testimony.<sup>117</sup> In other words, this is an unresolved, generations-long, societal question that is subject to significant public debate. The Greenpeace defendants were well within their rights to express their opinion on this issue.

## **Greenpeace cannot be punished for opinions on whether Energy Transfer's private security forces committed "violence" against "peaceful" protesters**

The plaintiffs also claimed that the Greenpeace defendants had falsely accused Energy Transfer's private security forces of using "violence" against "peaceful" protesters. There were several reasons why the court should not have allowed these statements to go to the jury for deliberation.

First, words like "peaceful" and "violence" are subjective and do not have a black-and-white meaning, especially when both sides view the events from different cultural, historical, and political perspectives. This makes it difficult to prove these words true or false. For example, many law enforcement officials and Morton County residents might have viewed the protesters as "violent" when they were yelling or causing disruptions but still acting within their constitutional First Amendment rights. Meanwhile, some Indigenous communities might describe a pipeline company's desecration of Mother Earth to be violent, even in a project where no confrontations between law enforcement and protesters took place. Protesters interviewed in media reports also consistently expressed frustration with what they perceived as undue violence from law enforcement.<sup>118</sup>

Second, unlike the meaning of the words "peaceful" and "violent," the defendants' more specific allegations about the use of pepper spray, attack dogs, and other weapons are verifiable and are the sorts of details that could have been theoretically proven false in court. But Energy Transfer did not disprove these allegations. To the contrary, numerous media reports and eyewitness accounts documented the same kinds of force that were described in the Greenpeace statements.<sup>119</sup> These allegations circulated widely in the public for months before the Greenpeace defendants made their statements.<sup>120</sup>

Investigative journalist Alleen Brown documented some of the details of the law enforcement and security personnel response to the protests: "For more than six months, water protectors faced off against military-grade armored vehicles, surveillance drones, at least one sniper, police with semi-automatic rifles, a surface-to-air missile launcher, tear gas, rubber bullets, flash-bang grenades, and water cannons deployed in sub-freezing weather."<sup>121</sup> Hundreds of protesters reportedly experienced injuries and hospitalization due to dog bites, hypothermia from being sprayed with icy water, loss of hearing, and other physical harms.<sup>122</sup> Journalists were also reportedly hit with rubber bullets on multiple occasions.<sup>123</sup>

Energy Transfer argued that the security forces' response to the protests was appropriately proportionate.<sup>124</sup> However, the unprecedented size of the protests against the Dakota Access Pipeline meant that there were not clear standards for what a proportionate use of force by law enforcement would entail in this kind of situation.<sup>125</sup> In other words, the line between reasonable use of force and unreasonable force was open to public debate, and the Greenpeace defendants were well within their rights to offer an opinion.

Third, Energy Transfer argued that force was not used against “peaceful” protesters because the protesters were violent rather than peaceful.<sup>126</sup> During trial, the plaintiffs’ lawyers reportedly showed the jury evidence that some protesters had engaged in violent activities. This was a logical fallacy. None of the nine statements suggest that all protesters were peaceful — and proving that some protesters were violent does not disprove the defendants’ statements that violence was used against peaceful protesters.<sup>127</sup> Indeed, several law enforcement witnesses reportedly acknowledged that many of the protesters were peaceful.<sup>128</sup> It was inappropriate for the court to allow the jury to deliberate on such subjective statements, especially when the plaintiffs did not present enough evidence to prove them false.

## **Greenpeace relied on reputable sources when claiming that Energy Transfer “deliberately desecrated” cultural sites**

During the trial, Energy Transfer’s lawyers reportedly attempted to recharacterize the defendants’ statements about the destruction of cultural sites as accusations of “digging up dead bodies.” This, too, was misleading. According to the defendants:

“[The plaintiffs] characterized the statements about cultural sites as accusing them of ‘digging up dead bodies,’ which plainly contradicted evidence that confirmed that Sioux burial sites may not have human remains and that no one associated with the Greenpeace Defendants or the [Standing Rock Sioux Tribe] understood burial sites to mean sites with dead bodies. The statements relevant to this issue all referred to ‘cultural sites,’ ‘culturally important sites,’ and/or ‘burial grounds’; none mentioned ‘bodies’ or human remains.”<sup>129</sup> (citations omitted from quote)

During the protests, significant public debate occurred on the question of whether the company deliberately destroyed cultural sites and burial grounds. The Standing Rock Sioux Tribe and others repeated this allegation on multiple occasions — citing detailed evidence — before Greenpeace made its statements.<sup>130</sup>

Investigative journalist Alleen Brown also examined this question in depth. According to her reporting, a tribal history expert for the Standing Rock Sioux Tribe surveyed a two-mile stretch in late August 2016 and documented 27 burial sites and 82 stone features used in ceremonies. On Friday, September 2, 2016, the Tribe filed these findings with the court as part of ongoing litigation. The next day, on Saturday, September 3, the Labor Day holiday weekend when construction crews normally did not work, Energy Transfer allegedly sent bulldozers and security dogs to the same area where the sites were found. Using information obtained through public records requests, Brown reported that the bulldozers arrived at least five days ahead of the planned construction schedule, and that Energy Transfer did not request the security dog teams until late the night before — suggesting a last-minute decision to bulldoze in the area. The Morton County Sheriff also testified that he was not notified in advance of this late change in the company’s construction plans, contrary to the usual protocol.<sup>131</sup>

Energy Transfer claimed during trial that the area that was bulldozed was not the same as the one where the Standing Rock Sioux Tribe had documented cultural sites. The Standing Rock Sioux Tribe maintains to this day that the sites were destroyed.

Greenpeace demonstrated during trial that it relied on the Standing Rock Sioux Tribe's assessment of the situation. In tort law, a plaintiff who is a public figure (as Energy Transfer is) usually cannot win a defamation claim if the defendant relied upon reputable sources.<sup>132</sup> Indeed, Energy Transfer's own expert witnesses testified that the Tribe was best placed to identify its own "cultural" sites. Energy Transfer's lawyers misled the jurors by bringing in "archaeological" experts who testified that they did not find "archaeological" sites, which are different from "cultural" sites.<sup>133</sup>

Given the high-profile public nature of the Dakota Access Pipeline and the attention that this alleged act of destruction received, the Greenpeace defendants were acting within their rights to express an opinion on the debate and to rely on the Standing Rock Sioux Tribe's expertise on the matter.

## The plaintiffs' claims also failed to meet other requirements for defamation (libel) under North Dakota law

Energy Transfer also failed to provide evidence proving several other elements that are required to win a defamation/libel claim in North Dakota.<sup>134</sup> Notably:

- **The plaintiffs did not prove that Greenpeace's statements caused them any harm.** None of the allegedly defamatory statements were original to the defendants. All were re-publications of opinions that already were in wide circulation, including in sources ranging from Standing Rock Sioux Tribe statements to United Nations statements to Fox News.<sup>135</sup> Energy Transfer did not prove that the defendants' republication of these often-repeated statements caused the company any harm. For example, the plaintiffs provided no evidence whatsoever that their public relations firms, which were active throughout the protests, had spent a single minute of time responding to any reputational harm caused by the defendants' statements.
- **The plaintiffs never proved that the authors of the statements had serious doubts about the truth of what they wrote.** Energy Transfer was required in this case to show that the defendants had "actual malice," which means that the authors of the statements must have entertained serious doubts about the truth of their statements, made the statements with reckless disregard for whether they were false, or knew the statements were false.<sup>136</sup> Energy Transfer presented no evidence of this, and instead presented the jury with irrelevant evidence.<sup>137</sup> To the contrary, the evidence showed that the Greenpeace defendants relied on prior statements by credible sources, such as the Standing Rock Sioux Tribe and the United Nations, which is a valid defense against a finding of "actual malice."

- **The plaintiffs did not demand that the defendants issue a correction.** According to North Dakota law, plaintiffs can only recover general damages for defamation if they have “made a timely and adequate request for correction or clarification.” If they have not done so within 90 days of the statement, they can only seek what is known as “special damages” for “provable economic loss.”<sup>138</sup> In this case, the plaintiffs made no such demand for retraction, nor did they provide evidence of any economic loss that occurred due to the defendants’ statements.

Despite the plaintiffs’ multiple failures to meet the basic requirements of the law, the court ordered each of the defendants to pay over \$16.5 million in defamation damages: Greenpeace, Inc. for its seven statements, Greenpeace International for the single act of signing its name to a letter, and Greenpeace Fund even though it did not publish or circulate any of the statements.



Protest held in San Francisco in 2016. © Photo by Funcrunch Photo

## 9. WHAT TORTIOUS INTERFERENCE CLAIMS DID THE PLAINTIFFS ALLEGE?

The court ordered the Greenpeace defendants to pay tens of millions of dollars in damages for “tortious interference with business relations” after concluding that their wrongdoing caused two costly delays: (1) a five-month delay in when the project became operational, leading to disruptions in its contracts with companies that wanted to ship oil through the pipeline; and (2) a 12-to-18 month delay in the company’s refinancing of a construction loan, resulting in a higher cost than originally expected.<sup>139</sup>

The jury awarded each plaintiff over \$71 million in damages for these delays.<sup>140</sup> Once again, the court made numerous errors in handling these claims. One of the plaintiffs, Energy Transfer, should not have even been eligible to receive these damages: it was not a party to the contracts with either the shipping companies or the banks.<sup>141</sup>

Additionally, to win on a claim of tortious interference with business relations, the interference must have been caused by a tort. Both delays resulted, unambiguously, from external events that were neither tortious nor connected to the defendants. These claims should not have gone to the jury for deliberation.

### **Greenpeace cannot be held responsible for a government decision to delay a permit**

Undisputed evidence showed that the five-month delay in the pipeline’s operational date was due to a decision by the U.S. Army Corps of Engineers to withhold a crucial permit because the project developers had not completed a full environmental impact study.<sup>142</sup>

Energy Transfer’s own public statements contradicted its allegations that Greenpeace was at fault. In a press release on November 15, 2016, Energy Transfer blamed the Obama administration, not Greenpeace, for the permitting delay.<sup>143</sup> No evidence emerged at trial that the defendants influenced the Army Corps of Engineers’ decision about the permit.<sup>144</sup>

Regardless, even if Greenpeace advocacy contributed in any way to the U.S. Army Corps’ decision to deny the permit, lobbying the government is a protected activity under the First Amendment to the U.S. Constitution, both as a right to free speech and a right to petition the government. It is not tortious and cannot be punished in court.

## Energy Transfer’s own records show that the delay in bank refinancing did not result from Greenpeace’s actions

Energy Transfer also claimed that “in reliance on [the defendants’] misrepresentations, banks terminated their relationships with Energy Transfer and Dakota Access.”<sup>145</sup> This, in turn, allegedly resulted in millions of dollars in additional duration fees, project loan interest, and higher bond interest rates.<sup>146</sup> There was simply no evidence of this.

Rather, the evidence demonstrated that the delay in bank refinancing was a result of a lawsuit that the Standing Rock Sioux Tribe had filed against the U.S. Army Corps of Engineers. As Alleen Brown reported in *Grist*, the evidence introduced at trial did not support Energy Transfer’s story at trial: “Meeting minutes from Energy Transfer’s board of directors, described in court, indicate that the company actually decided to hold off on refinancing due to banks’ concerns about the Standing Rock Sioux Tribe’s ongoing legal battle — not Greenpeace.”<sup>147</sup>

Likewise, Energy Transfer’s own corporate representative and treasurer reportedly told the company’s board that management decided to “delay the refinancing effort until there was more certainty regarding the lawsuit with the Native American Tribes.”<sup>148</sup>

No bank representatives testified at trial, so the jury did not hear any direct evidence about their motivations for their actions. Instead, the judge reportedly allowed an Energy Transfer employee to testify about why the banks were reluctant to refinance the construction loan — which is a classic example of inadmissible hearsay.<sup>149</sup>

Regardless of whether Greenpeace’s advocacy influenced the banks’ decisions, this too is a form of protected free speech that cannot be punished as tortious interference when the underlying statements are not knowingly false. As described in Section 8 of this report, none of the defendants’ statements were tortious.



*Water defenders camp near Standing Rock in October 2016. © Photo by Cayla Nimmo*

## 10. WHAT PROPERTY DAMAGE CLAIMS DID THE PLAINTIFFS ALLEGE?

During the trial, Energy Transfer claimed to have suffered widespread, on-the-ground property damage-related costs that the company incurred as a result of the protests — such as payments to private security firms to protect the construction sites and workers, change orders with construction contractors, and Dakota Access’s purchase of a private property called Cannonball Ranch, which enabled it to bring trespass claims against the protesters. The court held the Greenpeace defendants fully responsible for all these costs, in violation of North Dakota law and the U.S. Constitution.

### **The property damages claims are based on unsubstantiated allegations that the defendants coordinated everything that happened at the protests**

The plaintiffs argued that among the tens of thousands of people who participated in the protests, the Greenpeace defendants alone were responsible for all these costs, because the six Greenpeace, Inc. employees who participated in the protests had supposedly coordinated and encouraged all the unlawful activities that took place.

There was no evidence to support this allegation. The jury nonetheless agreed with the plaintiffs, finding Greenpeace, Inc. liable for a range of property damages totaling more than \$273 million (later reduced to around \$170 million by the trial judge). The court also found Greenpeace International liable for conspiracy related to property damages. Greenpeace Fund was not held liable for property damages.

### **Energy Transfer LP wasn’t even eligible to receive property damages**

In the plaintiffs’ complaint, only Dakota Access LLC sought compensation for property damage. Energy Transfer LP was ineligible to recover damages, because the company is not registered to do business in North Dakota and did not own any property or have any easements along the pipeline route.<sup>150</sup> The court disregarded this detail, awarding Energy Transfer nearly \$50 million in property damages nonetheless.

### **No evidence emerged at trial that the Greenpeace defendants did anything wrong**

According to the U.S. Supreme Court, a court cannot hold someone liable for nonviolent, protected free speech — even if that protected speech causes economic harm to others. Nor can courts hold someone liable for supporting a protest, even if some of the other protest participants commit crimes.<sup>151</sup> Rather, plaintiffs in a civil lawsuit can only prevail if they demonstrate that specific acts of wrongdoing by the defendants were the proximate cause of specific harms suffered by the plaintiffs.

As discussed above, Energy Transfer's security forces reportedly conducted minute-by-minute surveillance of the protest camps, hired agents to infiltrate the camps and map out the protest groups, and obtained hundreds of thousands of internal communications from the Greenpeace defendants during discovery. Yet Energy Transfer's lawyers did not produce any evidence linking Greenpeace to specific acts of wrongdoing that resulted in harm to the company.

As KVRR Local News reported, "Evidence presented in the trial so far indicates Greenpeace wasn't high on police's radar during the protests."<sup>152</sup> Likewise, KVRR reported that the Morton County sheriff who led the law enforcement response to the protests "indicated on the witness stand...he was not aware of Greenpeace's involvement." According to Drilled Media, Energy Transfer's own private contractors "rarely mentioned" Greenpeace in their daily intelligence reports, and the 1,700 pages of police operations briefings only had one reference to Greenpeace.<sup>153</sup>

## Juries are not supposed to reach a verdict based on speculation

Under North Dakota law, the judge has a responsibility to ensure that the jury follows the law, evaluates the evidence (or lack thereof) presented to them, and does not resort to "speculation or conjecture" in reaching its verdict.<sup>154</sup> The Greenpeace defendants argued in their post-trial motions that the court failed to instruct the jury on how to distinguish between circumstantial evidence — which can be used to reach a verdict — and improper inferences that require speculation and guesswork.<sup>155</sup>

As described by Greenpeace, Inc., "The jury was shown evidence of vandalism, destroyed equipment, rocks and other objects thrown at law enforcement, law enforcement being shot at, people receiving death threats — with the implication that Greenpeace was behind it all."<sup>156</sup>



A road sign at the entrance of the Standing Rock reservation in November 2016. © Photo by David T. Stephenson

## Box 4: Where is the evidence of any wrongdoing by the Greenpeace defendants?

Energy Transfer's own records from the time of the protests point to other protesters and organizations, not the Greenpeace defendants, as the source of their concerns:

- Why was Greenpeace's name mentioned only in passing, and not in conjunction with any wrongdoing, in the **thousands and thousands of pages of minute-by-minute surveillance** that Energy Transfer's private security conducted during the protest?
- Why couldn't **law enforcement witnesses** who testified on behalf of Energy Transfer recall a single act of wrongdoing by the Greenpeace defendants?
- Why couldn't **Energy Transfer's own executives** name a single example of wrongdoing by any of the Greenpeace defendants during trial?
- Why didn't **Energy Transfer's public relations firms**, hired to manage the company's reputation during the protests, spend any time responding to the Greenpeace defendants' allegedly defamatory statements?
- Why didn't any of **Energy Transfer's board of director meeting minutes, internal documents, or press releases** at the time of the protest mention Greenpeace as the cause of project delays, while the company publicly blamed the Obama administration and the Standing Rock Sioux Tribe for the delays?
- Why did **Energy Transfer's board of director meeting minutes** attribute the delay in refinancing the company's construction loan to the lawsuit brought by the Standing Rock Sioux Tribe, rather than to Greenpeace?



Law enforcement officers at Standing Rock in November 2016. © Photo by Eric Rosenwald

# 11. CAN GREENPEACE BE PUNISHED FOR “NONVIOLENT DIRECT ACTION”?

At trial, Energy Transfer hinged its property damage claims on evidence that the nonprofit organization Indigenous Peoples Power Project (IP3) received funding from Greenpeace, Inc. to conduct “nonviolent direct action” training for thousands of protest participants.<sup>157</sup> The company’s lawyers told the jury to watch out for “codewords” used by the defendants, reportedly calling nonviolent direct action a codeword for criminal activity.<sup>158</sup>

## The plaintiffs produced no evidence that wrongdoing occurred during the training sessions

Energy Transfer did not present any evidence that the Greenpeace-supported training sessions encouraged or coordinated any illegal activities. Energy Transfer’s own project manager testified in a deposition that the plaintiffs did not know who attended the trainings.<sup>159</sup> Nor did the plaintiffs produce any evidence of any wrongdoing that occurred during the trainings. Instead, according to the North Dakota Monitor, the plaintiffs’ lawyers encouraged the jury to assume that these training sessions taught protesters how to use vandalism, trespassing, and intimidation to harm the company.<sup>160</sup>

In reality, all the evidence showed that the Standing Rock Sioux Tribe invited Greenpeace, Inc. to support training to help ensure that protest participants adhered to the rules that they had established. (See Box 5.) The Greenpeace defendants produced evidence that the training taught nonviolent principles and expressly discouraged property destruction.<sup>161</sup> Energy Transfer produced no evidence to suggest otherwise.<sup>162</sup>

But even if the training sessions had encouraged protesters to engage in civil disobedience, the U.S. Supreme Court has said that these actions still would have been protected free speech.<sup>163</sup> As described by the Greenpeace defendants, “While non-violent direct action may include some form of civil disobedience, and therefore conduct that may be illegal on its face, advocacy for illegal conduct — even violent conduct (which this was not) — is protected by the First Amendment unless it is ‘directed to inciting or producing imminent lawless action and likely to incite or produce such action.’”<sup>164</sup>

## What is “nonviolent direct action”?

During the trial, the plaintiffs’ property damage claims hinged on their lawyers’ ability to successfully convince the jury, without evidence, that “nonviolent direct action” was a “codeword” for lawlessness.<sup>165</sup>

In fact, nonviolent direct action is a tactic that arose after World War I as a deliberate alternative to violence occurring in revolutions in Russia and elsewhere, and which has been used by leaders such as Mahatma Gandhi, Nelson Mandela, and Rosa Parks.<sup>166</sup>

Martin Luther King Jr. famously described his actions as nonviolent direct action in his 1963 Letter from a Birmingham Jail, in which he analyzed how these actions were rooted in Christian ethics.<sup>167</sup>

Nonviolent direct action includes a wide range of tactics that protesters use to challenge the status quo and demand the reforms that they are seeking —such as protest marches, picketing, vigils, leafletting, art and music performances, and boycotts. Nonviolent direct action can but does not necessarily involve “civil disobedience,” which means deliberately breaking laws in a conscientious and nonviolent manner, such as when Rosa Parks broke segregation laws in Alabama by refusing to give up her bus seat to a white passenger.<sup>168</sup>

From the beginning of the Dakota Access Pipeline protests, the Standing Rock Sioux Tribe explicitly communicated their wish that all protest participants adhere to nonviolent direct action principles. The purpose of the trainings funded by Greenpeace, Inc. was to ensure that participants understood these principles. This is lawful, First Amendment-protected activity.

## **Even Energy Transfer’s “gotcha” evidence did not show any unlawful activity or harm caused to the plaintiffs**

Lacking real evidence to make its case, Energy Transfer relied on several pieces of circumstantial evidence obtained during discovery to suggest that Greenpeace, Inc. employees participated in civil disobedience activities during the protests. None of these pieces of evidence, however, provided any proof that Greenpeace, Inc. caused any harm or engaged in any activity for which the plaintiffs could recover damages.<sup>169</sup>

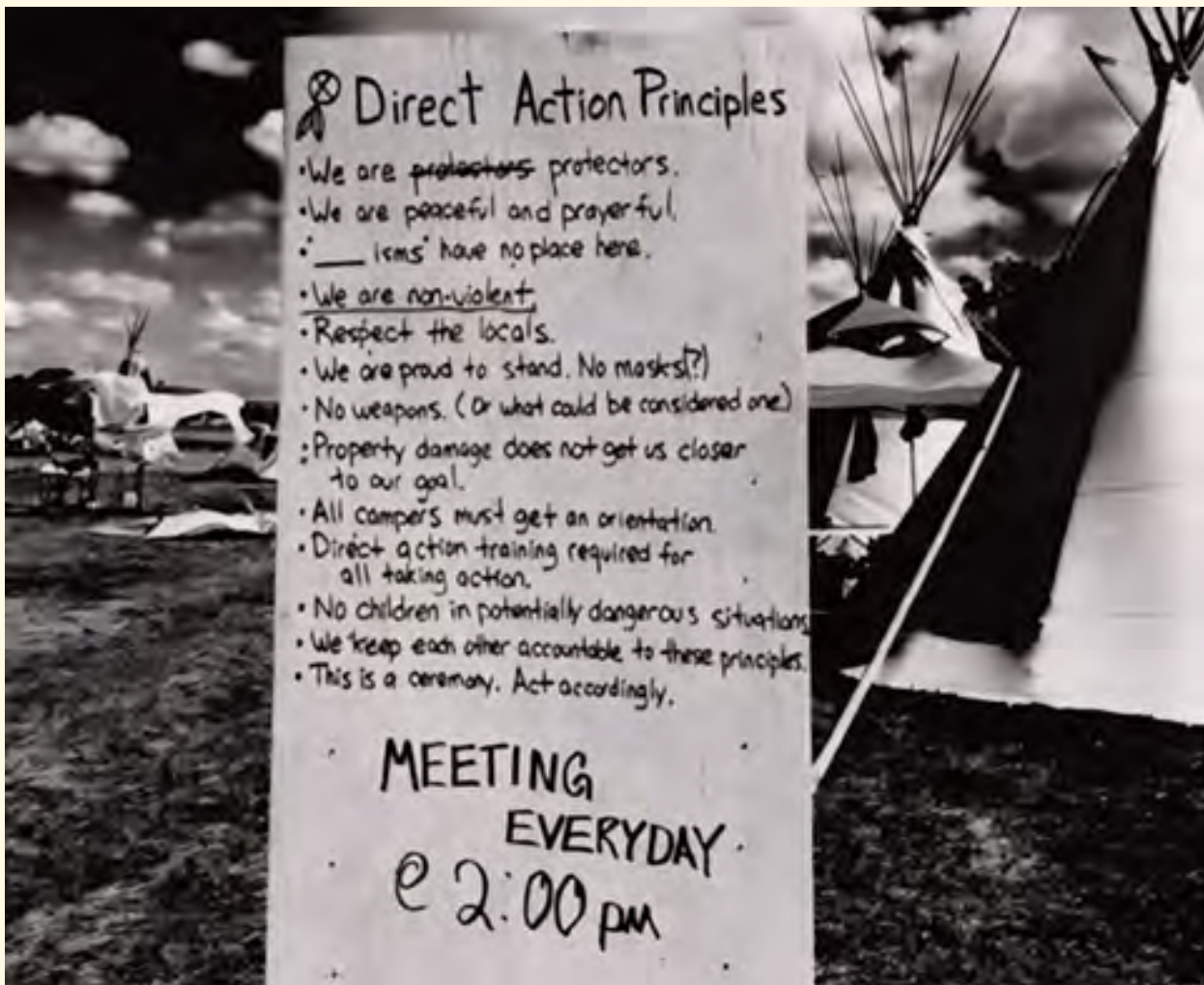
- In an internal email exchange, two Greenpeace, Inc. employees discussed an idea for a hypothetical blockade at a construction equipment yard. There is no evidence that this protest action ever occurred or that the idea was shared with others.
- A Greenpeace, Inc. employee was arrested but never charged for participating in a protest march that blocked a public road. Because this took place on public space, it did not involve trespassing on Energy Transfer property. An Energy Transfer witness also confirmed that several other access routes to the construction site remained open during that time, so the march did not delay construction.
- During the protests, a Greenpeace, Inc. employee reportedly drove on back roads, monitoring construction activity and then sharing this information with other protesters.<sup>170</sup> This “scouting” is not inherently unlawful, just as Energy Transfer’s surveillance of protesters at Standing Rock, or a corporation’s intelligence research into competitors, or a political candidate’s opposition research into an opponent, is not inherently unlawful. Energy Transfer did not provide any evidence that any unlawful activities took place at the sites where the employee did his scouting.<sup>171</sup>

- A Greenpeace, Inc. employee testified that she had run down the pipeline easement carrying a windsock on an unspecified day at an unspecified location. Energy Transfer reportedly argued that this was proof that the defendants had committed trespass against the plaintiffs, despite lacking any evidence that this action interfered with the plaintiffs' use of the easement or caused any damage whatsoever. Nevertheless, the jury awarded \$32.7 million in damages for the windsock running.<sup>172</sup>
- Greenpeace, Inc. donated approximately eight lockboxes, which are devices that can be used to connect people's hands to each other during a protest. Greenpeace also provided a few workshops to train participants on using lockboxes safely. However, law enforcement testified that they did not observe any of the Greenpeace-provided lockboxes being used in illegal activities. (Greenpeace lockboxes had a distinct design and were only designed to connect two people's arms together; other lockboxes, not provided by Greenpeace, were reportedly present at the protests and used to lock individuals to construction equipment.)<sup>173</sup>
- Energy Transfer relied extensively on evidence of a draft manual on nonviolent direct action that an employee at Greenpeace International wrote in February 2017 – after the Dakota Access Pipeline protests had finished. Energy Transfer's lawyers reportedly tried to use this manual to prove to the jury that the Greenpeace defendants designed the IP3 training and encouraged participants to disobey the law.<sup>174</sup> As described by the defendants, however, the draft manual did not exist at the time of the protests and was never used afterwards: "It was a draft manual and not being used by [Greenpeace] International, let alone by anyone at Greenpeace, Inc. And no testimony was ever presented that connected the [nonviolent direct action] manual to the events at Standing Rock."<sup>175</sup> Every trial witness with knowledge of the trainings said that no such manual was used at Standing Rock. Indigenous activists, not Greenpeace, Inc., designed the training sessions held at Standing Rock and based the training on the "Direct Action Principles" co-developed by the Standing Rock Sioux Tribe and IP3. (See Box 5.)

## Box 5: Greenpeace, Inc. supported training that encouraged protest participants to adhere to the Standing Rock Sioux Tribe's "Direct Action Principles"

The Standing Rock Sioux Tribe and the nonprofit Indigenous Peoples Power Project (IP3) developed these "Direct Action Principles" to guide behavior at the protests.<sup>176</sup> The IP3-led (and Greenpeace, Inc. funded) training that lies at the heart of Energy Transfer's case was based on these principles – and yet Energy Transfer convinced the jury that "nonviolent direct action" was a "codeword" for criminal activity.

The Tribe posted the principles on a sign at the entrance to the camp and took several steps, including organizing training, to encourage participants to adhere to these principles.



Source: Indigenous Peoples Power Project (IP3)

## 12. HOW DID THE COURT CALCULATE THAT GREENPEACE HAD CAUSED HUNDREDS OF MILLIONS OF DOLLARS IN DAMAGES?

Even if Energy Transfer had produced evidence that Greenpeace, Inc.'s protest activities led to harm (they did not), the appropriate step for a court would be to ensure that each defendant pays only the proportion for which they are responsible.

### **The court did not attribute responsibility among the different stakeholders**

The court should have required the jury to decide what portion of harms suffered by the plaintiff was attributable to each defendant, to the plaintiffs themselves, and to others who are not parties to the lawsuit. The court was wrong to hold the defendants responsible for all of Energy Transfer's claimed expenses without first asking the jury to attribute responsibility among different stakeholders. This error alone is the basis for a mistrial.<sup>177</sup>

The court made this mistake at several points in the trial, including when awarding over \$152 million in property damages to the plaintiffs. In a post-trial motion, Greenpeace wrote:

"The property damage Dakota Access complained of could have been caused by any number of the 100,000 individuals at Standing Rock who had no relationship with Greenpeace, Inc. — including those who brought their own supplies, conducted their own scouting and ran their own trainings. Yet Plaintiffs presented no evidence disproving those alternative causes or tortfeasors. That left the jury only to speculate impermissibly on whether the damages were attributable to Greenpeace, Inc."<sup>178</sup>

The court also made the same mistake when awarding the plaintiffs almost \$50 million in defamation damages and over \$143 million for tortious interference with business relations. Energy Transfer did not show how the Greenpeace statements alone, out of similar statements made by hundreds if not thousands of others before them, caused them any additional harm. Nor did they ever explain how the defendants could be held liable for 100% of the costs associated with project delays, when the evidence clearly showed other reasons for the delay.

## The court did not differentiate between the costs of lawful and unlawful protest activities

Nor did the court require the jury to differentiate between costs arising out of lawful and unlawful protest activities when calculating damages. Most of these costs for which Energy Transfer claimed compensation likely arose out of the company's response to lawful protest activities — and therefore cannot be recovered in court. It is theoretically possible that Energy Transfer experienced protest-related costs arising from torts, but we can't be sure: Energy Transfer did not calculate damages arising out of specific illegal activities, nor did it produce any evidence linking the Greenpeace defendants to any of these torts.

In its post-trial analysis, Greenpeace noted, “The damages analysis did not calculate damages associated with any specific incident, location or date.” Instead, “[Energy Transfer’s] damages experts testified that they were instructed to assume that Greenpeace was responsible for 100% of the protest-related damages — no matter where or when they occurred.”<sup>179</sup>

Investigative journalist Alleen Brown, who attended the trial, also raised concerns with the testimony of an Energy Transfer expert witness who calculated damages at the construction site: “His damage total wasn’t broken down by event or attributed to any group. He included damages in Iowa and Illinois where Greenpeace never visited. Hard to imagine any organization or group or individual is responsible for all this.”<sup>180</sup>

Brown also wrote on Bluesky, “There has been no attempt so far to quantify what part of these costs is attributable to Greenpeace. The assumption is that Greenpeace caused ALL the protest-related costs. In essence they’re claiming Standing Rock was a Greenpeace movement.”<sup>181</sup> In these and many other ways, Energy Transfer’s narrative contradicts the public record of what really occurred at Standing Rock.



*Oceti Sakowin Camp at Cannon Ball in January 2017. © Photo by Michael Treloar*

## 13. CONCLUSION

It takes a high bar and exceptional circumstances for a court to overturn a jury verdict. Courts are careful to respect the role of juries in finding facts and only step in when a jury acts in an extremely unreasonable way, such as when the verdict is “manifestly against the weight of the evidence.”<sup>182</sup> This case surpasses that threshold several times over. The lower court’s errors have already caused significant and undeserved harm to the Greenpeace defendants. A fair and objective analysis of the law and the facts make it apparent that this lawsuit has always been nothing more than a SLAPP. The court’s judgment should be reversed.

*Note: EarthRights International provided legal representation for two of the defendants in Energy Transfer’s initial SLAPP lawsuit in federal court: BankTrack (federal case dismissed in 2018)<sup>183</sup> and Krystal Two Bulls (federal case dismissed in 2019).<sup>184</sup>*



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<sup>1</sup> The Standing Rock Sioux Tribe described the protests in a March 2025 statement. According to the Tribe: “Today, Energy Transfer is taking Greenpeace to court, frivolously alleging defamation and seeking money damages, designed to shut down all voice supporting Standing Rock. The case is an attempt to silence our Tribe about the truth of what happened at Standing Rock, and the threat posed by [the Dakota Access Pipeline] to our land, our water and our people. The Standing Rock Sioux Tribe will not be silenced.” The statement also said, “The overwhelming majority of the protests were peaceful, prayerful and non-violent,” while acknowledging that protest participants included both “a small number of extremists” and “infiltration by private, security forces.” [sic] Standing Rock Sioux Tribe, “Standing Rock Sioux Tribal Chairwoman Janet Alkire Statement on the Energy Transfer Lawsuit Against Greenpeace,” 3 Mar. 2025, <https://www.standingrock.org/2025/03/03/standing-rock-sioux-tribal-chairwoman-janet-alkire-statement-on-the-energy-transfer-lawsuit-against-greenpeace>. The Standing Rock Sioux often referred to Lake Oahe as the “source of life for the Tribe.” See Water Protector Legal Collective, Standing Rock: For the Love of Water, 2016-2026: A Ten-Year Retrospective Report, Apr. 2026, p. 21, <https://www.waterprotectorlegal.org/legal/fortheloveofwaterreport>.

<sup>2</sup> Karen Zraick, New York Times, “Judge Approves \$345 Million Verdict Against Greenpeace in Pipeline Suit,” 27 Feb. 2026, <https://www.nytimes.com/2026/02/27/climate/greenpeace-energy-transfer-verdict-dakota-access.html?smid=nytcore-ios-share>; Greenpeace, “Greenpeace organizations to appeal US \$345 million North Dakota court judgment in Energy Transfer’s intimidation lawsuit,” 27 Feb. 2026, <https://www.greenpeace.org/usa/greenpeace-organizations-to-appeal-us-345-million-north-dakota-court-judgment-in-energy-transfers-intimidation-lawsuit>.

<sup>3</sup> The Uniform Law Commission describes SLAPPs as the use of the civil litigation system “not to seek redress or relief for harm or to vindicate one’s legal rights, but rather to silence or intimidate citizens by subjecting them to costly and lengthy litigation.” See Uniform Law Commission, Uniform Public Expression Protection Act, Oct. 2020, <https://www.uniformlaws.org/viewdocument/final-act-110?CommunityKey=4f486460-199c-49d7-9fac-05570be1e7b1>.

<sup>4</sup> BankTrack, “Global call on banks to halt loan to Dakota Access Pipeline,” 30 Nov. 2016, [https://www.banktrack.org/news/global\\_call\\_on\\_banks\\_to\\_halt\\_loan\\_to\\_dakota\\_access\\_pipeline](https://www.banktrack.org/news/global_call_on_banks_to_halt_loan_to_dakota_access_pipeline).

<sup>5</sup> For a list of the damages awarded to the plaintiffs, see Alleen Brown, Eco Files, “Eco-Roundup: Energy Transfer’s War Chest for Defeating A Protest Movement,” 31 Mar. 2025, <https://www.alleenbrown.com/eco-roundup-energy-transfers-war-chest-for-defeating-a-protest-movement>. Investigative journalist Alleen Brown observed the trial and reported on it for various media outlets. Because the trial court denied requests by media organizations to livestream the trial, on-site reporting by Brown and other reporters has become an especially important historical record of what took place.

<sup>6</sup> For a more comprehensive list of errors made by the court, as identified by the defendants, we recommend reading: (1) Greenpeace Defendants’ Brief in Support of Motion for a New Trial, or to Alter or Amend the Judgment, Energy Transfer LP et al. v. Greenpeace International et al., North Dakota District Court, South Central Judicial District, Morton County, 27 Mar. 2026, para. 138, available at <https://www.greenpeace.org/static/planet4-international-stateless/2026/03/f1dd37c0-gp-brief-iso-motion-for-new-trial-2026.pdf>; and (2) Greenpeace, Inc., Brief in Support of Greenpeace, Inc.’s Renewed Motion for Judgment as a Matter of Law, Energy Transfer et al. v. Greenpeace Int’l et al., North Dakota District Court, South Central Judicial District, Morton County, 16 Apr. 2025, available at [https://www.greenpeace.org/static/planet4-international-stateless/2026/02/20250416-5085-GP-Inc.s-Brief-iso-Renewed-Motion-for-Judgment-as-a-Matter-of-Law.pdf?\\_gl=1\\*1j2xdt2\\*\\_up\\*MQ.\\*\\_ga\\*MjM1MzlyMTg3LjE3NzI1NDgzMjE.\\*\\_ga\\_94MRTN8HG4\\*\\_czE3NzI1NDgzMjEkbzEkZzAkdDE3NzI1NDgzMjEkaJYwJGwwJGgyNzQ0OTgyMTI](https://www.greenpeace.org/static/planet4-international-stateless/2026/02/20250416-5085-GP-Inc.s-Brief-iso-Renewed-Motion-for-Judgment-as-a-Matter-of-Law.pdf?_gl=1*1j2xdt2*_up*MQ.*_ga*MjM1MzlyMTg3LjE3NzI1NDgzMjE.*_ga_94MRTN8HG4*_czE3NzI1NDgzMjEkbzEkZzAkdDE3NzI1NDgzMjEkaJYwJGwwJGgyNzQ0OTgyMTI).

<sup>7</sup> Greenpeace Defendants’ Brief in Support of Motion for a New Trial, para. 138, at note 6.

<sup>8</sup> In its March 2026 motion for a new trial, the Greenpeace defendants alleged numerous errors by the court, many of which are alone sufficient grounds to declare a mistrial or overturn the judgment. These included, for example: failure to change venue due to a significantly biased jury pool in Morton County (para. 17), denial of a motion for emergency discovery after alleged activities to influence the jury pool before trial (para. 18), failure to strike biased jurors from the jury panel (para. 39), failure to ensure that the verdict reflects actual fault attributable to each defendant rather than an assumption of 100% responsibility for all the plaintiffs’ costs (para. 60), allowing Energy Transfer to assert a claim and receive damages related to a construction loan to which it was not a party (para. 77, 98), allowing defamation/tortious interference claims to go forward even though the plaintiffs did not submit evidence to satisfy all the elements of the claim (para. 78), allowing defamation/tortious interference claims to go forward against statements that were protected under the First Amendment (paras. 81-87), allowing the plaintiffs’ attorneys to repeatedly misrepresent what the defendants actually said with regard to the defamation/tortious interference claims (para. 82), allowing defamation/tortious interference claims to go forward without proof that the statements were materially false (para. 83), allowing defamation/tortious interference claims to go forward without the required evidence to demonstrate actual malice and in contradiction of evidence that objectively refuted the actual malice requirements (paras. 88-92), allowing the plaintiffs’ attorneys to misrepresent the meaning of “actual malice” to the jury (para. 90), allowing the defamation/tortious interference claims to proceed without evidence of proximate cause and in contradiction of evidence that objectively refuted the proximate cause requirements (paras. 93-96), ordering damages of tens of

millions of dollars for signing a letter to banks that was of so little significance to the plaintiffs at the time that they did not invoke their right to demand a retraction (para. 101), ordering tens of millions of dollars for defamation/tortious interference claims against Greenpeace Fund without evidence that it published any of the statements (para. 102), allowing tens of millions of dollars for damages against Greenpeace Fund simply on the basis that Greenpeace, Inc. and Greenpeace Fund had the same person acting as executive director (paras. 102-106), ordering Greenpeace International liable for tens of millions of dollars for defamation/tortious interference without a showing of any evidence to demonstrate the organization's "actual malice" (para. 107), awarding Energy Transfer over \$70 million in damages for alleged interference in a business relationship to which it was not a party (para. 110), holding the defendants liable for costs arising out of a federal government decision to withhold a permit, in violation of the constitutional right to petition the government (paras. 111-114), holding the defendants liable for the government decision to withhold a permit without any evidence of causation between the defendants' actions and the government action (paras. 115-118), allowing an excessive jury award of over six times the amount requested by Energy Transfer for tortious interference (para. 120), awarding Energy Transfer over \$45 million in property damages when it owned no property in North Dakota (para. 122), awarding Dakota Access tens of millions of dollars in property damages that were not linked to any recognizable property that it owned (para. 124), awarding Dakota Access compensation for the purchase of Cannonball Ranch which it was not legally allowed to purchase (para. 124), holding Greenpeace, Inc. liable for various "aiding and abetting" claims without evidence that it knew that any particular third party it supported planned to commit or did commit any specific tortious action (para. 125), holding Greenpeace, Inc. liable for supporting First Amendment protected training for protesters (para. 127), holding Greenpeace, Inc. liable for numerous costs that it was impossible to attribute to the defendant (para. 129), holding Greenpeace, Inc. liable for numerous out-of-state costs with no apparent connection to the case (para. 130), holding Greenpeace, Inc. liable for property damages without evidence of causation (paras. 131-134), failure to distinguish the plaintiffs' costs that arose in response to lawful versus unlawful activities (paras. 135-136), allowing the plaintiffs to prevail on property damage claims without presenting evidence that excludes other possible causes of the alleged damages (para. 137), validating jury award amounts that were excessive, extreme, and based on prejudice, and which did not reflect the underlying alleged conduct (paras. 138, 145-148), allowing liability based on a conspiracy finding without any showing of evidence that the defendants entered into an agreement to commit any actual torts (para. 139), failure to hold the jury to the appropriate "clear and convincing evidence" standard for exemplary damages (paras. 141-143), failure to reduce exemplary damages in a proportional manner after reducing and removing some of the compensatory damages (para. 144), failure to follow the appropriate legal standard for reviewing and validating exemplary damages (para. 149), erroneously awarding damages for conspiracy (paras. 152-153), failure to follow the defendants' election of separate hearings for compensatory and exemplary damages, which led to confusing and inaccurate application of the various legal standards required for each claim (paras. 154-159), allowing law enforcement personnel who were witnesses and otherwise had an interest in the case to be present in the courtroom and to expose the jury members to prejudicial security procedures (paras. 160-161), improper admission of testimony of plaintiffs' damages experts who were improperly instructed to assume that the defendants were 100% responsible for all the plaintiffs' costs (paras. 163-169), improper admission of inflammatory statements that were not alleged to be defamatory, which prejudiced the jury (paras. 170-173), improper admission of evidence of the defendants' protected free speech, allowing the plaintiffs to use this protected language as evidence of "defamation" (para. 174), repeated improper admission of evidence that confused the jury about the nature and scope of claims, such as unrelated Greenpeace documents produced years after the protests ended (paras. 176-189), improperly allowing plaintiffs' witnesses to testify about events and evidence for which they had no personal or direct knowledge, while asking non-expert witnesses for opinions on topics they were not qualified to answer (paras. 190-196), improperly allowing the plaintiffs to question the defendants' witnesses about matters on which they had no personal knowledge, including hypothetical lines of questioning that confused the jury (paras. 197-198), improper admission of inflammatory evidence designed to portray the protests as violent but having no connection to the defendants (paras. 199-204), improperly allowing the plaintiffs to base their tortious interference claims on inadmissible hearsay (paras. 205-206), repeatedly excluding the defendants' relevant and admissible evidence, which prejudiced their defense (paras. 207-213), failure to follow the law in preparing the jury instructions (paras. 214-224), improper inclusion on the jury verdict form of claims that the plaintiffs did not plead and/or did not present evidence for (paras. 228-229), improperly using the plaintiffs' jury instructions and verdict forms that contained an expansion of their claims beyond what was in their second amended complaint (paras. 230-234), failing to rule on several of the parties' motions (paras. 235-240), improperly allowing defamation claims to proceed past the two-year deadline for commencing such claims (paras. 241-247), improperly granting personal jurisdiction over Greenpeace International without minimum contacts to North Dakota (para. 248). Greenpeace Defendants' Brief in Support of Motion for a New Trial, at note 6.

<sup>9</sup> See section 10 of this report.

<sup>10</sup> See section 6 of this report.

<sup>11</sup> See section 10 of this report.

<sup>12</sup> See section 8 of this report.

<sup>13</sup> See section 11 of this report.

<sup>14</sup> See section 10 of this report.

<sup>15</sup> See section 9 of this report.

<sup>16</sup> See section 4 of this report.

<sup>17</sup> See section 4 of this report.

<sup>18</sup> See Uniform Law Commission, at note 3.

<sup>19</sup> Second Amended Complaint, Energy Transfer LP et al. v. Greenpeace International et al., North Dakota District Court, South Central Judicial District, Morton County, 6 Mar. 2024, para. 10, available at [https://www.greenpeace.org/static/planet4-international-stateless/2025/02/20240306-Second-Amended-Complaint-BW-refile.pdf?\\_gl=1\\*16jscjn\\*\\_up\\*MQ..\\*\\_ga\\*NzU5NjE3NDQzLjE3NzY2NDE2Njk.\\*\\_ga\\_94MRTN8HG4\\*\\_cE3NzY2NDE2NjkkbzEkZzAkdDE3NzY2NDE2NjkkajYwJGwwJGg2NDcyODkwNTk](https://www.greenpeace.org/static/planet4-international-stateless/2025/02/20240306-Second-Amended-Complaint-BW-refile.pdf?_gl=1*16jscjn*_up*MQ..*_ga*NzU5NjE3NDQzLjE3NzY2NDE2Njk.*_ga_94MRTN8HG4*_cE3NzY2NDE2NjkkbzEkZzAkdDE3NzY2NDE2NjkkajYwJGwwJGg2NDcyODkwNTk).

<sup>20</sup> EarthRights International, The Fossil Fuel Industry's Use of SLAPPs and Judicial Harassment in the United States, 2022, <https://earthrights.org/publication/the-fossil-fuel-industrys-use-of-slapps-and-judicial-harassment-in-the-united-states>.

<sup>21</sup> For an analysis of current anti-SLAPP laws in the United States, see Institute for Free Speech, "Anti-SLAPP Statutes: 2025 Report Card," <https://www.ifs.org/anti-slapp-report>; see also, Irina Bukharin, EarthRights International, "Even in Divided America, Everyone Agrees on Anti-SLAPP," 11 Mar. 2026, <https://earthrights.org/blog/even-in-divided-america-everyone-agrees-on-anti-slapp>.

<sup>22</sup> For example, the Greenpeace defendants raised concerns about the court's anticipated order to post a bond for the judgment amount, or even a significant percentage of the judgment amount, before the appeal is concluded. Given the enormous damages award, the bond posting requirement could force some or all the Greenpeace defendants to shut down their operations even if the judgment is later vacated on appeal. See Greenpeace Defendants' Petition for Supervisory Writ, Energy Transfer LLP, et al. v. Greenpeace International, et al., Supreme Court of North Dakota, 27 Feb. 2025, para. 26, <https://portal-api.ctrack.ndcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/2b4aa1ab-cdd2-43fc-af88-33e078bbd827/docketentrydocuments/00f775e7-98f3-4b82-a1a5-bd50e03c4288>.

<sup>23</sup> See Court Order, Energy Transfer Equity, LP et al. v. Greenpeace International et al., U.S. District Court, District of North Dakota, 14 Feb. 2019. In dismissing the lawsuit, the federal district court raised numerous concerns with the complaint, such as failure to state a plausible RICO claim (p. 2, p. 6), the lack of allegations "that Greenpeace directed 'thousands of protesters' to perform specific illegal acts or had control over the protesters" (p. 8), and "problems with both causation and the fact that most (if not all) of the alleged 'false and sensational claims' are either subject to debate, matters of opinion, or inconsequential" (p. 11).

<sup>24</sup> Bloomberg News, the Standing Rock Sioux Tribe, and Greenpeace, Inc. have all published information about Energy Transfer's spill record. For a summary of these and other resources, see EarthRights International, "Energy Transfer's \$300 Million Lawsuit Against Greenpeace Poses a Serious Threat to Free Speech in America," 20 Feb. 2025, <https://earthrights.org/blog/energy-transfers-300-million-lawsuit-against-greenpeace-poses-a-serious-threat-to-free-speech-in-america>.

<sup>25</sup> Greenpeace USA (Greenpeace, Inc.), Bad Neighbor: Energy Transfer's Pattern of Pollution and Violations, Dec. 2025, <https://www.greenpeace.org/usa/bad-neighbor-energy-transfers-pattern-of-pollution-and-violations/#h-violations-and-penalties>.

<sup>26</sup> Moses Buchele, KUT News, "Lawsuits Allege Price Gouging, Market Manipulation By Gas Companies During Texas Freeze," 12 July 2021, <https://www.kut.org/energy-environment/2021-07-12/texas-winter-storm-gas-companies-lawsuits-price-gouging-market-manipulation>.

<sup>27</sup> Pennsylvania Office of the Attorney General, Case Update: Energy Transfer Convicted of Criminal Charges Related to Construction of Mariner East 2 Pipeline, Revolution Pipeline in Pennsylvania, 5 Aug. 2022, available at <https://web.archive.org/web/20250719225142/https://www.attorneygeneral.gov/taking-action/case-update-energy-transfer-convicted-of-criminal-charges-related-to-construction-of-mariner-east-2-pipeline-revolution-pipeline-in-pennsylvania>.

<sup>28</sup> As reported by Energy Transfer to the U.S. Securities and Exchange Commission (SEC): "Following a state grand jury investigation and the filing of charges alleging criminal misconduct involving the construction and related activities of the Mariner East 2 pipeline ('Mariner 2'), in August 2022 we entered into a plea of no contest with the Pennsylvania Attorney General's Office that requires us to pay fines to the Commonwealth, pay for independent evaluations of potential water quality impacts to residential water supplies and compensate any affected homeowners, and to also pay \$10 million to support water quality improvement projects... Subsequently, the EPA issued a Notice of Proposed Debarment ('NPD') on October 28, 2022, arising from SPLP's and ETC Northeast Pipeline, LLC's nolo contendere plea agreements and convictions for violations of Pennsylvania's Clean Streams Law related to the Revolution and Mariner 2 pipelines. The following entities were proposed for debarment: (1) SPLP (pleading entity); (2) ETC Northeast Pipeline, LLC (pleading entity); (3) Energy Transfer LP; (4) SemGroup LLC; and (5) LE GP, LLC. The NPD presently prevents the named entities from

pursuing or renewing Federal government contracts or Federal financial assistance agreements...” SEC, Form 10-K submitted by Energy Transfer LP for the fiscal year ended on 31 Dec. 2022, pp. 70-71, <https://www.sec.gov/Archives/edgar/data/1276187/000127618723000014/et-20221231.htm>.

<sup>29</sup> Greenpeace USA (Greenpeace, Inc.), “Energy Transfer vs. Greenpeace trial analysis,” section 1, 30 May 2025, <https://www.greenpeace.org/usa/energy-transfer-vs-greenpeace-trial-analysis>.

<sup>30</sup> Greenpeace Fund is an affiliated organization of Greenpeace, Inc. whose only purpose is to fundraise and make grants for specific campaigns. The Fund did not make any grants or conduct any other activities related to the Standing Rock protests. At the time of the protests, the same individual acted as executive director of both Greenpeace, Inc. and Greenpeace Fund. Both Greenpeace, Inc. and Greenpeace Fund are referred to collectively as Greenpeace USA in public communications. Greenpeace International is based in the Netherlands. For more background, see Brief in Support of Greenpeace Defendants’ Motions in Limine, Energy Transfer LLP, et al. v. Greenpeace International, et al., North Dakota District Court, South Central Judicial District, 3 June 2024, para. 46, available as part of Exhibit 7 at <https://portal-api.ctrack.ndcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/2b4aa1ab-cdd2-43fc-af88-33e078bbd827/docketentrydocuments/00f775e7-98f3-4b82-a1a5-bd50e03c4288> ; see also, Second Amended Complaint, paras. 15-19, at note 19.

<sup>31</sup> Second Amended Complaint, para. 2, at note 19.

<sup>32</sup> See generally, Second Amended Complaint, para. 2, at note 19.

<sup>33</sup> KVRN Local News, “Greenpeace seeks reversal of verdict, arguing jury wanted to ‘punish’ someone for pipeline protests,” 29 May 2025, <https://www.kvrn.com/2025/05/29/greenpeace-seeks-reversal-of-verdict-arguing-jury-wanted-to-punish-someone-for-pipeline-protests>.

<sup>34</sup> Mary Steurer, North Dakota Monitor, “Jury finds Greenpeace at fault for protest damages, awards pipeline developer more than \$660 million,” 19 Mar. 2025, <https://northdakotamonitor.com/2025/03/19/jury-finds-greenpeace-at-fault-for-protest-damages-awards-pipeline-developer-hundreds-of-millions> ; North Dakota District Court, South Central Judicial District, County of Morton, Special Verdict Form, Energy Transfer et al. v. Greenpeace Int’l et al., 19 Mar. 2025, available at <https://www.greenpeace.org/static/planet4-international-stateless/2025/07/44965a6e-19-mar-2025-final-special-verdict-form-et-et-al-v-gpi-et-al.pdf>.

<sup>35</sup> For a summary of what damages were removed, see Greenpeace USA (Greenpeace, Inc.), “Energy Transfer vs. Greenpeace trial analysis,” part 11, at note 29; see also, Court’s Memorandum Opinion on Motions for Judgment as a Matter of Law et al., North Dakota District Court, South Central Judicial District, County of Morton, Energy Transfer et al. v. Greenpeace Int’l et al., 28 Oct. 2025, available at [https://www.greenpeace.org/static/planet4-international-stateless/2025/10/9846841d-doc5320-2025\\_10\\_28\\_memorandum\\_opinion\\_re\\_motions.pdf?\\_gl=1\\*v7dt45\\*\\_up\\*MQ..\\*\\_ga\\*NjQxMTkxNjg3LjE3Njg4NTIzNzQ.\\*\\_ga\\_94MRTN8HG4\\*czE3Njg4NTIzNzQkbzEkZzAkdDE3Njg4NTIzNzQkajYwJGwwJGgxNzgwMTAzMjMz](https://www.greenpeace.org/static/planet4-international-stateless/2025/10/9846841d-doc5320-2025_10_28_memorandum_opinion_re_motions.pdf?_gl=1*v7dt45*_up*MQ..*_ga*NjQxMTkxNjg3LjE3Njg4NTIzNzQ.*_ga_94MRTN8HG4*czE3Njg4NTIzNzQkbzEkZzAkdDE3Njg4NTIzNzQkajYwJGwwJGgxNzgwMTAzMjMz).

<sup>36</sup> Court’s Final Judgment, North Dakota District Court, South Central Judicial District, County of Morton, Energy Transfer et al. v. Greenpeace Int’l et al., 27 Feb. 2026, available at [https://www.greenpeace.org/static/planet4-international-stateless/2026/02/0ac3e5f0-final-judgment\\_et-v-gpi-et-al-27-feb-2026.pdf](https://www.greenpeace.org/static/planet4-international-stateless/2026/02/0ac3e5f0-final-judgment_et-v-gpi-et-al-27-feb-2026.pdf).

<sup>37</sup> Greenpeace International, “Greenpeace defendants file motion for new trial in North Dakota court,” 1 Apr. 2026, [https://www.greenpeace.org/international/press-release/82435/greenpeace-motion-for-new-trial-north-dakota-et-slapp/?\\_gl=1\\*cjhd2q\\*\\_up\\*MQ](https://www.greenpeace.org/international/press-release/82435/greenpeace-motion-for-new-trial-north-dakota-et-slapp/?_gl=1*cjhd2q*_up*MQ).

<sup>38</sup> Greenpeace International, “Greenpeace defendants file motion for new trial in North Dakota court,” at note 37.

<sup>39</sup> Greenpeace International, “Greenpeace International begins groundbreaking Anti-SLAPP case to protect freedom of speech,” 2 Jul. 2025, <https://www.greenpeace.org/international/press-release/76511/greenpeace-international-anti-slapp-eu-lawsuit-energy-transfer> ; Greenpeace International, “Greenpeace International challenges Energy Transfer in first use of EU anti-SLAPP Directive,” 23 July 2024, <https://www.greenpeace.org/international/press-release/68484/greenpeace-international-challenges-energy-transfer-in-first-use-of-eu-anti-slapp-directive>.

<sup>40</sup> For a list of the damages awarded to the plaintiffs, see Alleen Brown, Eco Files, “Eco-Roundup: Energy Transfer’s War Chest for Defeating A Protest Movement,” at note 5.

<sup>41</sup> The amounts in this table are based on the jury verdict form from 19 Mar. 2025, the court’s order from 28 Oct. 2025 reducing the award, and the court’s final judgement from 27 Feb. 2026. See Special Verdict Form, at note 34; Court’s Memorandum Opinion on Motions for Judgment as a Matter of Law et al., at note 35; and Court’s Final Judgment, at note 36.

<sup>42</sup> See e.g., Nick Estes, Our History Is the Future: Standing Rock versus the Dakota Access Pipeline, and the Long Tradition of Indigenous Resistance, 2019, <https://www.hks.harvard.edu/faculty-research/library-research-services/collections/community-voices-perspectives/our-history> ; yuskin American Horse, The Guardian, “‘We are protectors, not protesters’: why I’m fighting the North Dakota pipeline,” 18 Aug. 2016, <https://www.theguardian.com/us-news/2016/aug/18/north-dakota-pipeline-activists-bakken-oil-fields> ; and Shelia Hu, Natural Resources Defense Council, “The Dakota Access Pipeline: What You Need to Know,” 12 Jun. 2024, <https://www.nrdc.org/stories/dakota-access-pipeline-what-you-need-know>.

<sup>43</sup> Standing Rock Sioux Tribe, “Standing Rock Sioux Tribe Files #NoDAPL Federal Lawsuit Against U.S. Army Corps

of Engineers Seeking Immediate Shutdown of Dakota Access Pipeline,” 14 Oct. 2024, <https://standingrock.org/2024/10/16/standing-rock-sioux-tribe-files-nodapl-federal-lawsuit-against-u-s-army-corps-of-engineers-seeking-immediate-shutdown-of-dakota-access-pipeline>.

<sup>44</sup> Nicky Woolf, The Guardian, “Native American tribes mobilize against proposed North Dakota oil pipeline,” 1 Apr. 2016, <https://www.theguardian.com/us-news/2016/apr/01/native-american-north-dakota-oil-pipeline-protest>.

<sup>45</sup> Saul Elbein, New York Times, “The Youth Group That Launched a Movement at Standing Rock,” 31 Jan. 2017, <https://www.nytimes.com/2017/01/31/magazine/the-youth-group-that-launched-a-movement-at-standing-rock.html>.

<sup>46</sup> Civil Rights Litigation Clearinghouse, “Case: Standing Rock Sioux Tribe v. United States Army Corps of Engineers,” <https://clearinghouse.net/case/16671>.

<sup>47</sup> Water Protector Legal Collective, Standing Rock: For the Love of Water, at note 1; Saul Elbein, National Geographic, “These Are the Defiant ‘Water Protectors’ of Standing Rock,” 26 Jan. 2017, <https://www.nationalgeographic.com/culture/article/tribes-standing-rock-dakota-access-pipeline-advancement>.

<sup>48</sup> Rebecca Hersher, NPR, “Key Moments In The Dakota Access Pipeline Fight,” 22 Feb. 2017, <https://www.npr.org/sections/thetwo-way/2017/02/22/514988040/key-moments-in-the-dakota-access-pipeline-fight>.

<sup>49</sup> BBC News, “Life in the Native American oil protest camps,” 2 Sept. 2016, <https://www.bbc.com/news/world-us-canada-37249617>.

<sup>50</sup> Sam Levin, The Guardian, “Dakota Access pipeline protests: UN group investigates human rights abuses,” 31 Oct. 2016, <https://www.theguardian.com/us-news/2016/oct/31/dakota-access-pipeline-protest-investigation-human-rights-abuses>.

<sup>51</sup> Drilled Podcast, Season 12: “SLAPP’d,” Episode 6: “The SLAPP Heard ‘Round the World,” <https://drilled.media/podcasts/drilled/12/slappd-ep6>. In this episode, journalist Alleen Brown interviewed Morton County residents about their impressions of the 2016 protests. See also, Morgan Sweeney, The Center Square, “An absolute mess’: Residents of Morton County reflect on pipeline protests years later,” 19 Mar. 2025, [https://www.thecentersquare.com/north\\_dakota/article\\_a44c3242-f445-4643-8074-5a7a6b1a348d.html](https://www.thecentersquare.com/north_dakota/article_a44c3242-f445-4643-8074-5a7a6b1a348d.html); and Natasha Rausch, The Dickinson Press, “Standing Rock, Morton County mend neighborly relationships since DAPL protests,” 10 Aug. 2019, <https://www.thedickinsonpress.com/news/standing-rock-morton-county-mend-neighborly-relationships-since-dapl-protests>.

<sup>52</sup> Greenpeace Defendants’ Petition for Supervisory Writ, paras. 5, 14, at note 22; Valerie Richardson, The Washington Times, “Dakota Access pipeline protesters send message to police with decapitated pig’s head at march,” 25 Nov. 2016, <https://www.washingtontimes.com/news/2016/nov/25/dakota-access-pipeline-protesters-send-message-pol>.

<sup>53</sup> Eyder Peralta, NPR, “Dakota Access Pipeline Protests In North Dakota Turn Violent,” 4 Sept. 2016, <https://www.npr.org/sections/thetwo-way/2016/09/04/492625850/dakota-access-pipeline-protests-in-north-dakota-turn-violent>.

<sup>54</sup> Sam Levin & Nicky Woolf, The Guardian, “Protesters pushed back after mass arrests at North Dakota pipeline site – as it happened,” 28 Oct. 2016, <https://www.theguardian.com/us-news/live/2016/oct/27/north-dakota-access-pipeline-police-protesters-live-updates?filterKeyEvents=false#liveblog-navigation>.

<sup>55</sup> Merrit Kennedy, NPR, “Police, Protesters Clash Near Dakota Access Pipeline Route,” 21 Nov. 2016, <https://www.npr.org/sections/thetwo-way/2016/11/21/502865857/police-protesters-clash-near-dakota-access-pipeline-route>.

<sup>56</sup> Alleen Brown & Naveena Sadasivam, Grist, “After infiltrating Standing Rock, TigerSwan pitched its ‘counterinsurgency’ playbook to other oil companies,” 13 Apr. 2023, <https://grist.org/accountability/tigerswan-documents-dakota-access-pipeline-standing-rock-surveillance>; Alleen Brown, The Intercept, “In the Mercenaries’ Own Words: Documents Detail TigerSwan Infiltration of Standing Rock,” 15 Nov. 2020, <https://theintercept.com/2020/11/15/standing-rock-tigerswan-infiltrator-documents>.

<sup>57</sup> Blake Nicholson, Associated Press, “North Dakota regulators seek to fine TigerSwan up to \$2M,” 16 Nov. 2018, <https://apnews.com/general-news-c8b36ee95bcd477096fac936d2ff01b2>. According to the Associated Press, TigerSwan responded to the allegations by saying that it did not engage in investigative or security work as defined under state law. In contrast, journalists for The Intercept reported that the firm had engaged in extensive collaboration with local law enforcement, according to more than 55,000 internal TigerSwan documents obtained through public records requests. See Alleen Brown, The Intercept, “In the Mercenaries’ Own Words: Documents Detail TigerSwan Infiltration of Standing Rock,” at note 56; Alleen Brown & Naveena Sadasivam, The Intercept, “Pipeline Company Spent Big on Police Gear to Use Against Standing Rock Protesters,” 22 May 2023, <https://theintercept.com/2023/05/22/standing-rock-energy-transfer-tigerswan>.

<sup>58</sup> Alleen Brown, Will Parrish & Alice Speri, The Intercept, “Leaked Documents Reveal Counterterrorism Tactics

Used at Standing Rock to 'Defeat Pipeline Insurgencies,' 27 May 2017, <https://theintercept.com/2017/05/27/leaked-documents-reveal-security-firms-counterterrorism-tactics-at-standing-rock-to-defeat-pipeline-insurgencies> ; Alleen Brown & Naveena Sadasivam, Grist, "After infiltrating Standing Rock, TigerSwan pitched its 'counterinsurgency' playbook to other oil companies," at note 56.

<sup>59</sup> Standing Rock Sioux Tribe, "Standing Rock Sioux Tribal Chairwoman Janet Alkire Statement on the Energy Transfer Lawsuit Against Greenpeace," at note 1.

<sup>60</sup> Alleen Brown, Grist, "The Kill Step," 18 July 2025, <https://grist.org/project/indigenous/standing-rock-greenpeace-slapp-lawsuit-dakota-access-pipeline-dapl>.

<sup>61</sup> According to the Standing Rock Sioux Tribe: "Thousands of persons from around the country, and the world, have come to express their opposition to the pipeline in a peaceful way. But state and local law enforcement have increasingly taken steps to militarize their presence, to intimidate participants who are lawfully expressing their views, and to escalate tensions and promote fear." Standing Rock Sioux Tribe, Letter to the U.S. Attorney General requesting a civil rights investigation, 24 Oct. 2016, <https://embed.documentcloud.org/documents/3189653-Lltr-to-AG-Lynch-Re-Dakota-Access-10-24-16-Pdf-1> ; see also, Catherine Thorbecke, ABC News, "Timeline of the Dakota Access Pipeline Protests," 28 Oct. 2016, <https://abcnews.go.com/US/timeline-dakota-access-pipeline-protests/story?id=43131355>.

<sup>62</sup> For examples of video coverage of the protest, see Democracy Now!, "VIDEO: Dakota Access Pipeline Company Attacks Native American Protesters with Dogs and Pepper Spray," 4 Sept. 2016, [https://www.democracynow.org/2016/9/4/dakota\\_access\\_pipeline\\_company\\_attacks\\_native](https://www.democracynow.org/2016/9/4/dakota_access_pipeline_company_attacks_native) ; Catherine Thorbecke, ABC News, "Timeline of the Dakota Access Pipeline Protests," at note 61; Sam Levin, Nicky Woolf & Damian Carrington, "North Dakota pipeline: 141 arrests as protesters pushed back from site," 28 Oct. 2016, <https://www.theguardian.com/us-news/2016/oct/27/north-dakota-access-pipeline-protest-arrests-pepper-spray>.

<sup>63</sup> Standing Rock Sioux Tribe, "Standing Rock Sioux Tribal Chairwoman Janet Alkire Statement on the Energy Transfer Lawsuit Against Greenpeace," at note 1.

<sup>64</sup> See e.g., KFYR TV, "Law enforcement issues statement on Dakota Access Pipeline protest," 3 Sept. 2016, <https://www.kfyrtv.com/content/news/Law-enforcement-issues-statement-on-Dakota-Access-Pipeline-protest-392267271.html> ; Eyder Peralta, NPR, "Dakota Access Pipeline Protests In North Dakota Turn Violent," at note 53.

<sup>65</sup> Nicole Meir, Associated Press, "Covering the Dakota Access Pipeline Protests," 2 Dec. 2016, <https://www.ap.org/the-definitive-source/behind-the-news/covering-the-dakota-pipeline-protests>.

<sup>66</sup> Greenpeace USA (Greenpeace, Inc.), "Energy Transfer vs. Greenpeace trial analysis," at note 29.

<sup>67</sup> See Section 10 of this report.

<sup>68</sup> Administration of Donald J. Trump, Memorandum on Construction of the Dakota Access Pipeline, 24 Jan. 2017, <https://www.govinfo.gov/content/pkg/DCPD-201700067/pdf/DCPD-201700067.pdf>.

<sup>69</sup> Rebecca Beitsch, The Hill, "Court sides with tribes in Dakota Access Pipeline case, ordering full environmental review," 25 Mar. 2020, <https://thehill.com/policy/energy-environment/489488-court-sides-with-tribes-in-dakota-access-pipeline-case-ordering> ; Mary Steurer, North Dakota Monitor, "Federal judge dismisses Standing Rock's latest lawsuit over Dakota Access Pipeline," 28 Mar. 2025, <https://northdakotamonitor.com/2025/03/28/federal-judge-dismisses-standing-rocks-latest-lawsuit-over-dakota-access-pipeline>.

<sup>70</sup> For a detailed history of legal battles over the Dakota Access Pipeline, see Water Protector Legal Collective, Standing Rock: For the Love of Water, pp. 70-82 at note 1. The Water Protect Legal Collective is a leading Indigenous-led nonprofit law firm and advocacy organization that was initially created as the on-the-ground legal team for the Indigenous-led resistance to the Dakota Access Pipeline. See also, Congressional Research Service, "Court Rules Dakota Access Pipeline Needs Further Environmental Review," 1 Feb. 2021, [https://www.congress.gov/crs\\_external\\_products/LSB/PDF/LSB10457/LSB10457.5.pdf](https://www.congress.gov/crs_external_products/LSB/PDF/LSB10457/LSB10457.5.pdf); Shelia Hu, Natural Resources Defense Council, "The Dakota Access Pipeline: What You Need to Know," at note 42; NDN Collective, Faulty Infrastructure and the Impacts of the Dakota Access Pipeline, 22 Mar. 2022, <https://ndncollective.org/ndn-collective-releases-groundbreaking-report-on-dapl>.

<sup>71</sup> Alleen Brown, The Intercept, "Five Spills, Six Months in Operation: Dakota Access Track Record Highlights Unavoidable Reality – Pipelines Leak," 9 Jan. 2018, <https://theintercept.com/2018/01/09/dakota-access-pipeline-leak-energy-transfer-partners>.

<sup>72</sup> As of August 2025, according to journalist Alleen Brown: "As for the entire length of the pipeline, the Dakota Access Pipeline has already leaked 13 times since [it] entered operation in 2017. The largest leak was nearly 200 gallons. The draft environmental impact statement says that spill risk is inherent to pipelines. Drilled Podcast, Season 12: "SLAPP'd," Episode 4: "Back to the Water," <https://drilled.media/podcasts/drilled/12/s12-ep4>.

<sup>73</sup> Water Protector Legal Collective, Standing Rock: For the Love of Water, p. 79, at note 1.

<sup>74</sup> For example, the Water Protector Legal Collective wrote: "Public discussion of *Energy Transfer v. Greenpeace* has largely framed the case arising from Standing Rock as a dispute between an oil company and an environmental nonprofit, centered on questions of defamation and First Amendment protections. From this

perspective, the lawsuit would appear to be a conventional corporate challenge to protest-related speech. From the vantage point of the Water Protector Legal Collective, however, the case must be understood differently. WPLC has consistently described the litigation as a proxy war over Indigenous sovereignty, water protection, and the historical record of the #NoDAPL movement.” Water Protector Legal Collective, *Standing Rock: For the Love of Water*, p. 111, at note 1.

<sup>75</sup> Complaint, *Energy Transfer v. Greenpeace Int’l et al.*, U.S. District Court, District of North Dakota, 22 Aug. 2017, available at <https://earthrights.org/wp-content/uploads/ETP-complaint.pdf>.

<sup>76</sup> Business and Human Rights Center, “Resolute Forest Products lawsuits (re alleged racketeering & defamation by environmental organizations, USA),” 16 Mar. 2018, <https://www.business-humanrights.org/en/latest-news/resolute-forest-products-lawsuits-re-alleged-racketeering-defamation-by-environmental-organizations-usa>.

<sup>77</sup> Greenpeace USA (Greenpeace, Inc.), “Judge Orders Resolute Forest Products to Pay Almost 1 Million Dollars to Greenpeace,” 24 Apr. 2020, <https://www.greenpeace.org/canada/en/press-release/30838/judge-orders-resolute-forest-products-to-pay-almost-1-million-dollars-to-greenpeace>.

<sup>78</sup> See Court Order, *Energy Transfer Equity, LP et al. v. Greenpeace International et al.*, at note 23.

<sup>79</sup> Complaint, *Energy Transfer LP v. Greenpeace Int’l et al.*, North Dakota District Court, South Central Judicial District, Morton County, 18 Mar. 2018, available at <https://clearinghouse.net/doc/160677>.

<sup>80</sup> EarthRights International, “Greenpeace is Facing a Dangerous Legal Tactic Often Used by Wealthy Interests to Silence Free Speech,” 20 Feb. 2025, <https://earthrights.org/blog/greenpeace-is-facing-a-dangerous-legal-tactic-often-used-by-wealthy-interests-to-silence-free-speech>.

<sup>81</sup> Valley News Live, “Energy Transfer Partners CEO, Kelcy Warren, says DAPL was about a money raise,” 31 Aug. 2017 (starting at 4:00), <https://www.valleynewslive.com/content/misc/Energy-Transfer-Partners-CEO-Kelcy-Warren-says-DAPL-was-about-a-money-raise-442409553.html>.

<sup>82</sup> For more details about how Indigenous leaders have viewed Energy Transfer’s apparent attempts to “rewrite history,” see Water Protector Legal Collective, *Standing Rock: For the Love of Water*, pp. 111-118, at note 1.

<sup>83</sup> For a discussion of some of the law firm Gibson Dunn’s previous legal and communications efforts on behalf of corporations embroiled in controversy, see Alleen Brown, Grist, “The Kill Step,” Chp. 1, at note 60; and Drilled Podcast, Season 12: “SLAPP’d,” Episode 2: “The Trial Begins,” <https://drilled.media/podcasts/drilled/12/s12-ep02>.

<sup>84</sup> Drilled Podcast, Season 12: “SLAPP’d,” Episode 3: “The Charge,” <https://drilled.media/podcasts/drilled/12/s12-ep3>.

<sup>85</sup> Drilled Podcast, Season 12: “SLAPP’d,” Episode 6: “The SLAPP Heard ‘Round the World,” at note 51; Alleen Brown, Drilled Media, “Greenpeace Fights for Survival Against a Fossil Fuel Giant’s \$345-Million ‘SLAPP, Suit,” 23 Jan. 2026, <https://drilled.media/news/SLAPP-update>.

<sup>86</sup> This quote comes from Energy Transfer’s closing arguments at trial, as reported by Greenpeace, Drilled Media, and the New York Times. See Greenpeace USA (Greenpeace, Inc.), “Energy Transfer vs. Greenpeace trial analysis,” section 3, at note 29; Karen Zraick, New York Times, “The Case Against Greenpeace Puts a Spotlight on Native History,” 27 Feb. 2025, <https://www.nytimes.com/2025/02/27/climate/greenpeace-energy-transfer-standing-rock-history.html>; Drilled Podcast, Season 12: “SLAPP’d,” Episode 6: “The SLAPP Heard ‘Round the World,” at note 51.

<sup>87</sup> See e.g., Drilled Podcast, Season 12: “SLAPP’d,” Episode 6: “The SLAPP Heard ‘Round the World,” at note 51.

<sup>88</sup> Alleen Brown, Will Parrish & Alice Speri, The Intercept, “Leaked Documents Reveal Counterterrorism Tactics Used at Standing Rock to ‘Defeat Pipeline Insurgencies,’” at note 58; Alleen Brown & Naveen Sadasivam, The Intercept, “Pipeline Company Spent Big on Police Gear to Use Against Standing Rock Protesters,” at note 57; Email from Mark Pfeifle, OTR Strategies, “Subject: OUT-OF-STATE AGITATORS WITH DANGEROUS CRIMINAL HISTORIES - National Sheriffs’ Association Update - 10/19/2016” (obtained by Naveena Sadasivam through public records request), available at <https://www.documentcloud.org/documents/23819050-nationalsheriffsa-sociationoutofstateagitators20161019>; Steve Horn, DeSmog, “Emails Show Iraq War PR Alums Led Attempt to Discredit Dakota Access Protesters,” 20 Jul. 2017, <https://www.desmog.com/2017/07/20/emails-bush-iraq-war-pr-delve-off-the-record-strategies-dakota-access-pipeline>; Steve Horn, DeSmog, “In Heat of Dakota Access Protests, National Sheriffs’ Association Lobbied for More Military Gear,” 27 Apr. 2017, <https://www.desmog.com/2017/04/27/dakota-access-sheriffs-lobbying-military-gear>.

<sup>89</sup> See North Dakota Rules of Civil Procedure, Rule 59: New Trial; Amending a Judgment, available at <https://www.ndcourts.gov/legal-resources/rules/ndrcivp/59>.

<sup>90</sup> City of Mandan, “Energy Transfer Donates \$3 Million For Mandan Improvement Projects,” 11 June 2019, <https://www.cityofmandan.com/index.asp?SEC=2D86B9D1-D9CE-4F5E-A296-215D569359DA&DE=AD2A8115-8C1D-4F8F-8355-BBA15DB19779>.

<sup>91</sup> Drilled Podcast, Season 12: “SLAPP’d,” Episode 2: “The Trial Begins,” at note 83.

<sup>92</sup> The full methodology and results of the survey are included as an exhibit in a motion for change of venue that the defendants sent to the North Dakota Supreme Court before the trial. As summarized by the Greenpeace

defendants in their motion: “When the National Jury Project conducted a survey of eligible potential jurors in Morton County in 2022, it found that 100% of the 150 people surveyed were aware of the protests, and the majority of them had either been personally affected or knew someone who had been affected by the protests. Notably, 97% of Morton County residents surveyed indicated that they could not be a fair and impartial juror in this lawsuit.” (citations omitted) Greenpeace Defendants’ Petition for Supervisory Writ, para. 6, at note 22.

<sup>93</sup> According to the Greenpeace defendants: “Not even the judges of Morton County believed they could be impartial. In 2019, the Presiding Judge of the South Central Judicial District, the Honorable Gail Hagerty, reported that all judges in the district had recused themselves from the case. Then, three years later in May of 2022, the Presiding Judge of the South Central Judicial District, the Honorable Bruce Romanick, reported that the four new judges seated in the Morton County Courthouse since 2019 had recused themselves because they “are acquainted with the plaintiff/defendant, and feel that in the best interest of justice should disqualify themselves.” (Judge Romanick requested that this Court assign a judge from outside the district to hear this case in the interest of justice. In short, all of the judges of the South Central Judicial District recused themselves from this case—not once but twice. There is no reason to believe that the general jury population of Morton County is any less acquainted with or biased about the parties or the underlying events than its judges.” (citations omitted) Greenpeace Defendants’ Petition for Supervisory Writ, para. 13, at note 22; see also, Alleen Brown, Grist, “The Kill Step,” at note 60.

<sup>94</sup> KVRR Local News, “North Dakota Supreme Court denies petition to move Greenpeace trial to different court,” 6 Mar. 2025, <https://www.kvrr.com/2025/03/06/north-dakota-supreme-court-denies-petition-to-move-greenpeace-trial-to-different-court>.

<sup>95</sup> Mary Steurer, North Dakota Monitor, “Judge denies Greenpeace request to investigate mailer critical of DAPL protests,” 3 Jan. 2025, <https://northdakotamonitor.com/2025/01/03/judge-denies-greenpeace-request-to-investigate-mailer-critical-of-dapl-protests>. Articles in the Central ND News mailer had titles such as “University of Mary engineering, workforce development projects are ‘thriving’ following \$5M donation from Energy Transfer Partners” and “This month in history: Area schools locked down as authorities respond to pipeline protests.” Michael Standaert, North Dakota News Cooperative, “‘Weird’ newspaper calls out pipeline protests eight years later,” 1 Nov. 2024, <https://www.newscoopnd.org/weird-newspaper-calls-out-dapl-pipeline-protests>.

<sup>96</sup> Greenpeace Defendants’ Petition for Supervisory Writ, para. 19, at note 22; see also, Greenpeace Defendants’ Brief in Support of Motion for a New Trial, para. 20, at note 6.

<sup>97</sup> According to the Greenpeace defendants, “[T]he timing and nature of much of this recent publicity suggest it emanated from Plaintiffs or someone closely connected to them. On or about September 5, 2024, Energy Transfer’s founder and Board Chair Kelly Warren donated \$5M to a Super PAC named Turnout for America. Two weeks later, Turnout for America paid \$250,000 to Northern CB Corp. (an Illinois corporation providing printing and publishing services that was dissolved in 2022, whose president, Brian Timpone, is also the operator of Central ND News’s publisher Metric Media) for “media services.” Less than a month later, the direct mailer was sent primarily—and perhaps exclusively—to Morton County, North Dakota, via FMC Printing in Dallas, Texas, where Energy Transfer is based. The direct mailer identified a Central ND News website, which featured articles about North Dakota residents’ negative experiences with 2016 protests and stories lauding Energy Transfer’s donations in North Dakota. The same day the Central ND News website posted one such negative article about the protests, the group Grow America’s Infrastructure Now (GAIN) re-posted the article. GAIN is an advocacy coalition funded by Energy Transfer and set up by DCI, Energy Transfer’s longtime public relations firm.” (citations omitted) See Greenpeace Defendants’ Brief in Support of Motion for a New Trial, para. 33, at note 6; Brief in Support of Notice of Greenpeace Defendants’ Emergency Motion to Allow Limited Discovery on Direct Mailing to Potential Morton County Jurors, Energy Transfer LLP, et al. v. Greenpeace International, et al., North Dakota District Court, South Central Judicial District, Morton County, para. 9, <https://www.greenpeace.org/static/planet4-international-stateless/2025/02/20241122-GPDefs-Emergency-Mtn-to-Allow-Limited-Discovery-on-Direct-Mailing-to-Potential-Morton-County-Jurors.pdf>; DeSmog, an investigative news outlet that monitors the fossil fuel industry, published evidence suggesting that the mailer could be traced back to Energy Transfer. Emily Sanders, DeSmog, “Who’s Funding This ‘Newspaper’ Mailed to Potential Jurors in Greenpeace’s Trial?,” 16 Dec. 2024, <https://www.desmog.com/2024/12/16/energy-transfer-dakota-pipeline-standing-rock-whos-funding-this-newspaper-mailed-to-potential-jurors-in-greenpeaces-trial>.

<sup>98</sup> Greenpeace Defendants’ Petition for Supervisory Writ, para. 18, at note 22.

<sup>99</sup> Alleen Brown (@alleenbrown.bsky.social), Post on Bluesky, 1 Mar. 2025, <https://bsky.app/profile/alleenbrown.bsky.social/post/3ljdkd46ds224>.

<sup>100</sup> Floodlight, “‘Weird’ newspaper shows up in North Dakota mailboxes attacking Dakota Access protests as Greenpeace trial looms,” 1 Nov. 2024, <https://floodlightnews.org/weird-newspaper-shows-up-in-north-dakota>; see also, Greenpeace Defendants’ Petition for Supervisory Writ, para. 7, at note 22.

<sup>101</sup> Energy Transfer aired at least one advertisement on TV in Morton County in February 2025 in the runup to the trial. See “Energy Transfer Proudly Operates in North Dakota with the Dakota Access Pipeline,” posted on YouTube on 22 Jan. 2025, <https://www.youtube.com/watch?v=amKTBbUAMHo>; see also, Greenpeace Defendants’ Petition for Supervisory Writ, Exhibit 16: Supplemental Declaration of Jennifer Davis in Support of

Greenpeace Defendants' Motion to Change Venue, at note 22; see also, Greenpeace Defendants' Brief in Support of Motion for a New Trial, para. 20, at note 6.

<sup>102</sup> Rachel Leingang, The Guardian, "Most jurors in US pipeline case against Greenpeace have fossil fuel industry ties," 27 Feb. 2025, <https://www.theguardian.com/us-news/2025/feb/27/greenpeace-dapl-jurors> ; Alleen Brown, Grist, "The Kill Step," chapter 4, at note 60.

<sup>103</sup> Greenpeace Defendants' Petition for Supervisory Writ, paras. 19 and 41, at note 22; Greenpeace Defendants' Brief in Support of Motion for a New Trial, para. 30, at note 6.

<sup>104</sup> Alleen Brown, Grist, "The Kill Step," at note 60.

<sup>105</sup> Greenpeace Defendants' Petition for Supervisory Writ, para. 21, at note 22; Greenpeace Defendants' Brief in Support of Motion for a New Trial, para. 27, at note 6.

<sup>106</sup> Greenpeace Defendants' Brief in Support of Motion for a New Trial, paras. 230-240, at note 6.

<sup>107</sup> Second Amended Complaint, para. 46, at note 19.

<sup>108</sup> Special Verdict Form, at note 34.

<sup>109</sup> Greenpeace USA (Greenpeace, Inc.), "Energy Transfer vs. Greenpeace trial analysis," Timeline, at note 29.

<sup>110</sup> These letters are available on the website of BankTrack, the Dutch nonprofit organization that organized the letter. BankTrack, as its name suggests, communicates regularly with commercial banks about human rights and environmental issues and has also organized numerous in-person meetings and exchanges between nonprofit organizations and banks, especially those that are members of the Equator Principles Association, in which Citi played a lead role. Receiving such a letter would not have been unusual or unique from the Equator Principles banks' perspectives. See BankTrack, "Global call on banks to halt loan to Dakota Access Pipeline," 30 Nov. 2016, at note 4; and BankTrack, "An Open Letter to the Equator Principles Association," 7 Nov. 2016, [https://www.banktrack.org/article/an\\_open\\_letter\\_to\\_the\\_equator\\_principles\\_association](https://www.banktrack.org/article/an_open_letter_to_the_equator_principles_association). The banks' response to the 30 November letter is also available online. See Citigroup, "Citi's Letter to BankTrack on Dakota Access Pipeline," 23 Dec. 2016, <https://www.citigroup.com/global/news/perspectives/2016/citis-letter-to-banktrack-on>.

<sup>111</sup> Special Verdict Form, at note 34.

<sup>112</sup> Special Verdict Form, at note 34.

<sup>113</sup> Greenpeace Defendants' Brief in Support of Motion for a New Trial, paras. 82-90, 174-175, at note 6.

<sup>114</sup> See e.g., Second Amended Complaint, para. 38, at note 19. According to paragraph 38: "The Greenpeace Defendants and BankTrack made, and repeated countless times, baseless claims regarding DAPL's route. Specifically, they falsely represented that the pipeline would traverse under and/or across sovereign [Standing Rock Sioux Tribe (SRST)] land. This is false. In fact, the pipeline does not traverse SRST property, at all."

<sup>115</sup> Special Verdict Form, at note 34; see also, Second Amended Complaint, para. 38, at note 19.

<sup>116</sup> For a detailed history, see Water Protector Legal Collective, Standing Rock: For the Love of Water, pp. 11-21, at note 1; see also, Wikipedia, "Treaty of Fort Laramie (1851)," [https://en.wikipedia.org/wiki/Treaty\\_of\\_Fort\\_Laramie\\_\(1851\)](https://en.wikipedia.org/wiki/Treaty_of_Fort_Laramie_(1851)) and "Treaty of Fort Laramie (1868)," [https://en.wikipedia.org/wiki/Treaty\\_of\\_Fort\\_Laramie\\_\(1868\)](https://en.wikipedia.org/wiki/Treaty_of_Fort_Laramie_(1868)). In a 1980 case, United States v. Sioux Nation of Indians, the U.S. Supreme Court ruled that the federal government had illegally taken tribal lands under the treaty. 448 U.S. 371 (1980). See also, Standing Rock Sioux Tribe, "Standing Rock Sioux Tribe Files #NoDAPL Federal Lawsuit Against U.S. Army Corps of Engineers Seeking Immediate Shutdown of Dakota Access Pipeline," at note 43.

<sup>117</sup> Mary Steurer & Amy Dalrymple, North Dakota Monitor, "Greenpeace gave intel, supplies, training to Dakota Access Pipeline protests, testimony shows," 28 Feb. 2025, <https://northdakotamonitor.com/2025/02/28/greenpeace-gave-intel-supplies-training-to-dakota-access-pipeline-protests-testimony-shows>.

<sup>118</sup> Sam Levin, The Guardian, "Over 120 arrested at North Dakota pipeline protests, including journalists," 25 Oct. 2016, <https://www.theguardian.com/us-news/2016/oct/25/north-dakota-oil-pipeline-protest-arrests-journalists-filmmakers> ; Sam Levin, The Guardian, "Guards for North Dakota pipeline could be charged for using dogs on activists," 26 Oct. 2016, <https://www.theguardian.com/us-news/2016/oct/26/north-dakota-pipeline-protest-guard-dogs-charges>.

<sup>119</sup> Examples of media reporting and allegations include: Standing Rock Sioux Tribe, Letter to the U.S. Attorney General requesting a civil rights investigation, at note 61; Report and Statement from Chief Edward John, Expert Member of the United Nations Permanent Forum on Indigenous Issues, Firsthand observations of conditions surrounding the Dakota Access Pipeline, 1 Nov. 2016, <https://social.desa.un.org/sites/default/files/inline-files/Report-ChiefEdwardJohn-DAPL2016.pdf> ; Merrit Kennedy, NPR, "Police, Protesters Clash Near Dakota Access Pipeline Route," at note 55; Sam Levin, The Guardian, "Dakota Access pipeline: Native Americans allege cruel treatment," 30 Oct. 2016, <https://www.theguardian.com/us-news/2016/oct/29/dakota-access-pipeline-native-american-protesters>; Kris Maher, Wall Street Journal, "Police in North Dakota Use Water, Rubber Bullets, Tear Gas in Latest Pipeline Clash," 21 Nov. 2016, [https://www.wsj.com/articles/police-in-north-dakota-use-water-rubber-bullets-tear-gas-in-latest-pipeline-clash-1479754199?gaa\\_at=eafs&gaa\\_n=AWETsqc0Rq\\_Bc7qjoPKxlq4lQHOU4GmgaRn8pT3pQGd4x5mlpKdwlRiKGVtPRVHweWY%3D&gaa\\_ts=698653a6&gaa\\_sig=rVU](https://www.wsj.com/articles/police-in-north-dakota-use-water-rubber-bullets-tear-gas-in-latest-pipeline-clash-1479754199?gaa_at=eafs&gaa_n=AWETsqc0Rq_Bc7qjoPKxlq4lQHOU4GmgaRn8pT3pQGd4x5mlpKdwlRiKGVtPRVHweWY%3D&gaa_ts=698653a6&gaa_sig=rVU)

y4TIRsavKZplcVYcB30Axbj3Z7EYUfX9pB19jHDB0MVXwYiAVu-HfjVI3JKReu8qntQC8dxBQknmRCsrwBg%3D%3D ; Jamil Dakwar, ACLU, "Police at Standing Rock Are Using Life-Threatening Crowd-Control Weapons to Crack Down on Water Protectors," 22 Nov. 2016, <https://www.aclu.org/news/racial-justice/police-standing-rock-are-using-life-threatening-crowd> ; see also, Alleen Brown, The Intercept, "In the Mercenaries' Own Words: Documents Detail TigerSwan Infiltration of Standing Rock," at note 56.

<sup>120</sup> See e.g., CBS News, "Guards accused of unleashing dogs, pepper-spraying oil pipeline protesters," 5 Sept. 2016, <https://www.cbsnews.com/news/dakota-access-pipeline-protest-turns-violent-in-north-dakota> ; Associated Press, "Oil Pipeline Protest Turns Violent in North Dakota," 4 Sept. 2016, available at <https://www.nbcnews.com/storyline/dakota-pipeline-protests/oil-pipeline-protest-turns-violent-north-dakota-n642626> ; Sarah Sunshine Manning, Indian Country Today Media Network, "Manning: 'And Then the Dogs Came': Dakota Access Gets Violent, Destroys Graves, Sacred Sites," 4 Sept. 2016, <https://indiancountrytodaymedianetwork.com/2016/09/04/manning-and-then-dogs-came-dakota-access-gets-violent-destroys-graves-sacred-sites-165677> ; ACLU North Dakota, "ACLU of North Dakota Statement on Excessive Use of Force Against Pipeline Protesters," 4 Sept. 2016, <https://www.aclund.org/press-releases/aclu-north-dakota-statement-excessive-use-force-against-pipeline-protesters> ; Democracy Now!, "VIDEO: Dakota Access Pipeline Company Attacks Native American Protesters with Dogs and Pepper Spray," at note 62; Eyder Peralta, NPR News, "Dakota Access Pipeline Protests In North Dakota Turn Violent," at note 53; Sam Levin, The Guardian, "Guards for North Dakota pipeline could be charged for using dogs on activists," at note 118. Based on information obtained through public records requests, The Intercept also reported that Energy Transfer's private security forces collaborated closely with local law enforcement responding to the protest. Alleen Brown & Naveena Sadasivam, The Intercept, "Pipeline Company Spent Big on Police Gear to Use Against Standing Rock Protesters," at note 57.

<sup>121</sup> Alleen Brown, Grist, "The Kill Step," at note 60.

<sup>122</sup> Julia Carrie Wong, The Guardian, "Dakota Access pipeline: 300 protesters injured after police use water cannons," 21 Nov. 2016, <https://www.theguardian.com/us-news/2016/nov/21/dakota-access-pipeline-water-cannon-police-standing-rock-protest>.

<sup>123</sup> Julia Carrie Wong, The Guardian, "Dakota Access pipeline: 300 protesters injured after police use water cannons," at note 122.

<sup>124</sup> Second Amended Complaint, para. 45, at note 19. According to paragraph 45: "The Greenpeace Defendants and BankTrack also repeatedly published false statements that Energy Transfer and/or Dakota Access used 'extreme violence' against 'peaceful, nonviolent'. [sic] This too is false. Neither Energy Transfer nor Dakota Access utilized 'extreme violence' against anyone. Construction workers and private security officers exercised restraint, and proportionately responded to extreme violence and intentional sabotage directed at Plaintiffs' employees and property by protestors. In fact, the protests incited and funded by Defendants at Lake Oahe were not remotely peaceful. The State of North Dakota publicly concluded that it was not Energy Transfer or Dakota Access that was violent, but the protestors..."

<sup>125</sup> See e.g., Blake Nicholson, AP News, "More than \$600,000 spent on police gear for pipeline protest," <https://apnews.com/article/1fa0605bafa1455da90bf806d5732ccd>.

<sup>126</sup> Special Verdict Form, at note 34.

<sup>127</sup> According to the defendants: "Plaintiffs had the burden of proving that it was false to say that force was ever used against peaceful protesters. Unable to make this showing, Plaintiffs simply reframed their challenge as to whether the protestors were always peaceful, confusing the jury as to what the actual statement at issue was. And statements characterizing force as extreme or excessive have been found to be nonactionable statements of opinion protected by the First Amendment..." Greenpeace Defendants' Brief in Support of Motion for a New Trial, para. 86, at note 6.

<sup>128</sup> Greenpeace USA (Greenpeace, Inc.), "Energy Transfer vs. Greenpeace trial analysis," at note 29.

<sup>129</sup> Greenpeace Defendants' Brief in Support of Motion for a New Trial, para. 83, at note 6.

<sup>130</sup> For further details on the position of the Tribe, see Water Protector Legal Collective, *Standing Rock: For the Love of Water*, pp. 39-46, at note 1; Standing Rock Sioux Tribe, "Standing Rock Sioux Tribe Files #NoDAPL Federal Lawsuit Against U.S. Army Corps of Engineers Seeking Immediate Shutdown of Dakota Access Pipeline," at note 43.

<sup>131</sup> For an in-depth analysis of the controversy around the alleged destruction of cultural sites, based on information obtained through public records requests, see Alleen Brown, Eco Files, "SLAPP'd Episode 5: Documents undermine pipeline company's claims about sacred sites," 16 Aug. 2025, <https://www.alleenbrown.com/slappd-episode-5-documents-undermine-pipeline-companys-claims-about-sacred-sites> ; Drilled Podcast, Season 12: "SLAPP'd," Episode 5: "Sacred Sites," <https://drilled.media/podcasts/drilled/12/SLAPPd-ep5> ; and also Alleen Brown, Grist, "The Kill Step," at note 60.

<sup>132</sup> The court in this case ruled that Energy Transfer is a "public figure." According to the U.S. Supreme Court decision in *New York Times v. Sullivan*, 376 U.S. 254 (1964), public officials (subsequently extended in other decisions to other kinds of public figures) cannot win a defamation claim unless they demonstrate that the

defendant acted with “actual malice.” Actual malice means that the defendant knew that the statement was false or had reckless disregard for the truth. Reliance on credible statements made by the leading expert on the Standing Rock Sioux Tribe’s cultural sites, i.e. the Tribe itself, demonstrates that the Greenpeace defendants did not act with actual malice.

<sup>133</sup> Second Amended Complaint, para. 39, at note 19 (“Contrary to these claims, the [Dakota Access Pipeline] route was meticulously planned to, and does, avoid historically or culturally important sites. In fact, as the Defendants are well aware, Plaintiffs went to extraordinary lengths to ensure cultural resources were not disturbed or destroyed, including by consulting with [the Standing Rock Sioux Tribe] prior to construction. Indeed, in April 2016, [the U.S. Army Corps of Engineers] determined – with the concurrence of the North Dakota State Historic Preservation Officer – that the pipeline affected no historic properties.”); see also, Alleen Brown, Eco Files, “SLAPP’d Episode 5: Documents undermine pipeline company’s claims about sacred sites,” at note 131.

<sup>134</sup> North Dakota defines libel as “a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes the person to be shunned or avoided, or which has a tendency to injure the person in the person’s occupation.” See North Dakota Century Code, Title 14, Chapter 14-02, “Personal Rights,” Section 14-02-03, <https://ndlegis.gov/cencode/t14c02.pdf#nameddest=14-02-03>; see also, North Dakota Pattern Jury Instructions - Civil (2025 Edition), Section C-9.10, [https://www.sband.org/page/pattern\\_jury\\_instruc](https://www.sband.org/page/pattern_jury_instruc); see also, North Dakota, Chapter 32-43: Uniform Correction or Clarification of Defamation Act, sections 32-43-03 and 32-43-05, available at <https://ndlegis.gov/cencode/t32c43.pdf>.

<sup>135</sup> According to the Greenpeace defendants: “Unrefuted evidence established that more than 140 organizations published reports on just the topics addressed in the Statements. For example, on September 16, 2016, Fox News reported ‘The encampment is on U.S. Army Corp of Engineers land, but most believe rightful ownership belongs to the Standing Rock Sioux, who had made their home there for centuries.’” (citations omitted) Greenpeace Defendants’ Brief in Support of Motion for a New Trial, para. 84, at note 6.

<sup>136</sup> As described by Greenpeace: “The court ruled that because Energy Transfer is a public figure, it must meet the constitutional standard of proving ‘actual malice.’ This means it is not enough to show that the alleged statements are false, ET must also show (with clear and convincing evidence) that the Greenpeace entities knew the statements were false, or had serious doubts as to the truth. / The Greenpeace defendants maintain that their statements are either true or protected opinion, and in any event, were not made with any knowledge of falsehood or reckless disregard for the truth. The disagreements with Energy Transfer’s position involve either mischaracterizing what Greenpeace actually said, or else differing opinions. Greenpeace defendants’ employees consistently testified that they relied on credible sources of information – such as the Standing Rock Sioux Tribe and the UN Expert Report – and that they stood by the statements and did not harbor any doubts about their truth when they wrote them. As will be contended in post-trial motions and any appeal, Energy Transfer has not met the constitutional actual malice standard. Seeking massive damages for First Amendment-protected speech has a dire chilling effect.” Greenpeace USA (Greenpeace, Inc.), “Energy Transfer vs. Greenpeace trial analysis,” Section 6, at note 29.

<sup>137</sup> Energy Transfer’s lawyers reportedly showed the jury several emails where a few Greenpeace employees – including those who were not authors of any of the allegedly defamatory statements – expressed a dislike of the company and its CEO. But dislike or even hostility towards the plaintiffs is not relevant to the legal meaning of “actual malice,” as Energy Transfer’s own lawyers had argued in a previous case. Greenpeace Defendants’ Brief in Support of Motion for a New Trial, paras. 88-91, 157-158, at note 6. Paragraph 90 quotes Energy Transfer’s law firm Gibson Dunn in another one of its cases: “But, even if true, such ‘hostility’ is irrelevant: ‘actual malice’ ‘has nothing to do with bad motive or ill will’ and ‘may not be inferred alone from evidence of personal spite [or] ill will.’”

<sup>138</sup> North Dakota, Chapter 32-43: Uniform Correction or Clarification of Defamation Act, sections 32-43-03 and 32-43-05, at note 134.

<sup>139</sup> Second Amended Complaint, paras. 128-133, at note 19. In paragraph 129, the plaintiffs alleged interference with third party relationships including existing and prospective creditors, existing and prospective investors, and existing and prospective long-term capacity transportation shippers. In paragraph 131, the plaintiffs wrote: “The Greenpeace Defendants intentionally interfered with Energy Transfer and Dakota Access’s existing and prospective business relationships with these third-parties by disseminating false, misleading, and defamatory statements concerning Energy Transfer and Dakota Access’s business and DAPL and supporting, funding, and committing acts of trespass and violence on Dakota Access’s land and property. This interference was committed intentionally and without justification or excuse.” In paragraph 133, the defendants alleged to have suffered damages including lost financing, increased costs of capital, increased operating costs, lost revenue, injury to reputation, mitigation costs, and attorney’s fees.

<sup>140</sup> The jury’s decision to hold each of the three defendants equally liable for tortious interference suggests that they did not conduct a methodical accounting to attribute damages to each defendant separately, as required by North Dakota law. Tortious interference liability requires a finding of liability for an underlying tort – in this case

either defamation and/or property damages. One of the three defendants, Greenpeace Fund, was only found liable for defamation and not for property damages. Another of the defendants, Greenpeace International, was primarily found liable for defamation with only one of the property damages (conspiracy). Only Greenpeace, Inc. was found fully liable for all the underlying torts. For more details, see Greenpeace Defendants' Brief in Support of Motion for a New Trial, para. 108, at note 6.

<sup>141</sup> Greenpeace Defendants' Brief in Support of Motion for a New Trial, paras. 77, 110, at note 6. According to this legal filing, Energy Transfer was not a party to the construction loan with the banks, nor was it a party to the transportation service agreements between the shippers and Dakota Access. These details do not appear to be contested by the plaintiffs.

<sup>142</sup> Greenpeace USA (Greenpeace, Inc.), "Energy Transfer vs. Greenpeace trial analysis," section 7, at note 29.

<sup>143</sup> Energy Transfer, "Energy Transfer Partners and Sunoco Logistics Partners Seek Federal Court Intervention to Stop Political Interference in Order to Complete the Dakota Access Pipeline," 15 Nov. 2016, <https://ir.energytransfer.com/news-releases/news-release-details/energy-transfer-partners-and-sunoco-logistics-partners-seek>.

<sup>144</sup> Greenpeace Defendants' Brief in Support of Motion for a New Trial, para. 117, at note 6.

<sup>145</sup> Second Amended Complaint, para. 84, at note 19.

<sup>146</sup> Second Amended Complaint, para. 84, paras. 128-133, at note 19.

<sup>147</sup> See Alleen Brown, Grist, "The Kill Step," chapter 5, at note 60. For a description of the evidence produced at trial on Energy Transfer's board deliberations, see Greenpeace Defendants' Brief in Support of Motion for a New Trial, para. 95, at note 6. Greenpeace also described the details of the refinancing in more detail in its post-trial analysis. Greenpeace, Inc., "Energy Transfer vs. Greenpeace trial analysis," section 8, at note 29. According to the trial analysis, Energy Transfer's board met to discuss the loan refinancing on February 6, March 28, and June 27, 2018 — after the company had already filed its initial federal lawsuit against the Greenpeace defendants. And yet, even after having decided that it would pursue a public narrative blaming Greenpeace for the protests, the board still made no connection between the loan refinancing and the Greenpeace defendants in its internal deliberations. For a description of the evidence produced at trial on Energy Transfer's board deliberations, see Greenpeace Defendants' Brief in Support of Motion for a New Trial, para. 95, at note 6.

<sup>148</sup> See the Greenpeace defendants' references to a communication by Energy Transfer corporate representative and treasurer Ashton Hayse. Brief in Support of Greenpeace Defendants' Motions in Limine, para. 45, available as part of Exhibit 7, at note 30.

<sup>149</sup> Greenpeace Defendants' Brief in Support of Motion for a New Trial, paras. 205-206, at note 6. According to paragraph 205: "The linchpin of Plaintiffs' theory of interference damages — that financial institutions decided to end their relationships with Plaintiffs because of Greenpeace, Inc. or International Statements — was based entirely on inadmissible hearsay. Specifically, the Court erred by allowing Ashton Hayse to testify regarding his purported conversations with investors or banking institutions over the Greenpeace Defendants' objections." (citations omitted) In paragraph 206, the defendants wrote: "This testimony was plainly inadmissible hearsay. Hayse testified as to what these third parties said regarding their institutions' reluctance to refinance, statements that were presented for the truth of the matter asserted — i.e., why these institutions were reluctant to refinance...Greenpeace Defendants never had the opportunity to cross-examine these third parties, and no possible hearsay exception applies. And the improper admission of this evidence was highly prejudicial, as this hearsay was the sole evidence supporting Plaintiffs' theory of damages for their defamation and tortious interference claims — for which the jury nevertheless awarded more than \$180 million in compensatory damages. No witnesses from the financial institutions provided testimony at trial. This legal error allowed the jury to rely only on Mr. Hayse's inadmissible testimony for these critical propositions." (citations omitted)

<sup>150</sup> Second Amended Complaint, paras. 93-121, at note 19; see also, Greenpeace Defendants' Brief in Support of Motion for a New Trial, para. 122, at note 6. According to paragraph 122: "Energy Transfer is a holding company. At the time the lawsuit was filed, it was not registered to do business in North Dakota and did not own any land, property or equipment...It has no lawful basis to assert a property claim or recover over \$45 million related to property damages." (citations omitted) For a description of property-related damages claimed by the plaintiffs, see also, Alleen Brown (@alleenbrown.bsky.social), Post on Bluesky, 5 Mar. 2025, <https://bsky.app/profile/did:plc:s7uayagc3l35lw5qsqyufzvv/post/3ljno25eghc2f>.

<sup>151</sup> These legal principles underlie the U.S. Supreme Court's landmark ruling in NAACP v. Claiborne Hardware Co., 458 U.S. 886, 926-34 (1982). See also, Greenpeace Defendants' Brief in Support of Motion for a New Trial, paras. 126, 136, at note 6. According to paragraph 126: "The Court emphasized, "[t]he right to associate does not lose all constitutional protection merely because some members of the group may have participated in conduct or advanced doctrine that itself is not protected."...To the contrary, the "presence of activity protected by the First Amendment imposes restraints on groups that may give rise to damages liability and on the persons who may be held accountable for those damages." (citations omitted) According to paragraph 136 "In Clairborne Hardware, the Supreme Court held, "[o]nly those losses proximately caused by unlawful conduct may be recovered." (citations omitted)

<sup>152</sup> KVRR Local News, “Greenpeace gave intel, supplies, training to Dakota Access Pipeline protests, testimony shows,” 3 Mar. 2025, <https://www.kvrr.com/2025/03/03/greenpeace-gave-intel-supplies-training-to-dakota-access-pipeline-protests-testimony-shows>. As reported by KVRR Local News: “Evidence presented in the trial so far indicates Greenpeace wasn’t high on police’s radar during the protests. Attorneys for Greenpeace introduced about 1,500 pages of law enforcement intel records from the demonstrations. One record from October 2016 identified organizations involved in the protest including the American Indian Movement, Native Lives Matter, Black Lives Matter and Anonymous, but didn’t list Greenpeace. / Attorneys for Energy Transfer pointed to just one reference to Greenpeace in the intel records, which connects the organization to a December 2016 protest at the Morton County Law Enforcement Center.”

<sup>153</sup> Alleen Brown, Drilled Media, “Greenpeace Fights for Survival Against a Fossil Fuel Giant’s \$345-Million ‘SLAPP, Suit,” at note 85.

<sup>154</sup> According to the North Dakota Supreme Court: “While, in an appropriate situation, circumstantial evidence may provide an inference of causation, there must be something more than pure speculation or conjecture.” *Anderson v. Meyer Broad. Co.*, 2001 ND 125, 630 N.W.2d 46, para. 35, available at <https://law.justia.com/cases/north-dakota/supreme-court/2001/20000322.html>; “Despite these deficiencies in the manner in which special damages were raised and argued to the jury, we believe that Johnson did not establish these damages with the requisite degree of certainty and proximity. The trier of fact must be furnished data sufficient to determine damages without resort to mere speculation or conjecture.” *Johnson v. Monsanto Co.*, 303 N.W.2d 86 (1981), available at <https://law.justia.com/cases/north-dakota/supreme-court/1981/9861-2.html>; “Great Plains argues that the structural problems with the house were not the proximate cause of Garland’s refusal of the job offer and that an award of damages for the lost salary difference was based upon conjecture and speculation. We agree.” *Swain v. Harvest States Coops.*, 469 N.W.2d 571 (1991), available at <https://law.justia.com/cases/north-dakota/supreme-court/1991/900270-3.html>.

<sup>155</sup> Greenpeace Defendants’ Brief in Support of Motion for a New Trial, para. 222, at note 6.

<sup>156</sup> Greenpeace USA (Greenpeace, Inc.), “Energy Transfer vs. Greenpeace trial analysis,” section 1, at note 29.

<sup>157</sup> As an example of what Indigenous Peoples Power Project’s (IP3’s) “nonviolent direct action training” entails, see IP3, “Direct Action 101,” <https://www.ip3action.org/directaction101>. Topics include: how to be an authentic ally to Indigenous communities, “know your rights” related to protests, setting up camp, conflict resolution, security culture, and sexual harassment.

<sup>158</sup> See Greenpeace USA (Greenpeace, Inc.), “Energy Transfer vs. Greenpeace trial analysis,” section 3, at note 29; Greenpeace Defendants’ Brief in Support of Motion for a New Trial, para. 185, at note 6.

<sup>159</sup> During a 2023 deposition, a senior Energy Transfer manager reportedly said, “We don’t have any documents detailing who attended training and who did not attend training. We don’t have any documents detailing who was there.” Brief in Support of Greenpeace Defendants’ Motions in Limine, para. 30, available as part of Exhibit 7, at note 30.

<sup>160</sup> Mary Steurer, North Dakota Monitor, “Former Greenpeace employee tells jury he emphasized nonviolence at Dakota Access Pipeline protests,” 11 Mar. 2025, <https://northdakotamonitor.com/2025/03/11/former-greenpeace-employee-tells-jury-he-emphasized-nonviolence-at-dakota-access-pipeline-protests>.

<sup>161</sup> One of the witnesses who helped lead these training sessions testified that the training focused on preventing violence, which is consistent with the reasons that the Standing Rock Sioux Tribe requested the training in the first place. According to a journalist for the North Dakota Monitor who observed the trial: “[The trainer] told attendees [of the training] to follow the leadership of the Standing Rock Sioux Tribe and to conduct themselves respectfully at all times. The training included admonitions against using violence, as well as instruction about deescalation tactics.” The idea for the training came from the tribal leaders, not from Greenpeace, Inc.: “The tribe asked him to come to Standing Rock to educate people about nonviolent protest tactics, he said.” Mary Steurer, North Dakota Monitor, “Former Greenpeace employee tells jury he emphasized nonviolence at Dakota Access Pipeline protests,” at note 160.

<sup>162</sup> Greenpeace Defendants’ Brief in Support of Motion for a New Trial, para. 134, at note 6. According to paragraph 134: “Plaintiffs never explain how teaching people to be “peaceful and prayerful,” to be “non-violent” and not to engage in “property damage” is unlawful or could support the damage verdict. Indeed, Plaintiffs consistently implied, without evidence, that Greenpeace Defendants trained protesters in destructive behavior, encouraging the jury to disregard the only evidence in the record—that IP3’s trainings were not run by Greenpeace, Inc., taught nonviolent principles, and expressly discouraged property destruction.”

<sup>163</sup> In *Brandenburg v. Ohio*, 395 U.S. 444 (1969), the U.S. Supreme Court ruled that the government may not prohibit speech unless it is directed to or likely to incite immediate lawless action.

<sup>164</sup> Greenpeace Defendants’ Brief in Support of Motion for a New Trial, para. 127, at note 6.

<sup>165</sup> See Greenpeace USA (Greenpeace, Inc.), “Energy Transfer vs. Greenpeace trial analysis,” section 3, at note 29; Greenpeace Defendants’ Brief in Support of Motion for a New Trial, para. 185, at note 6.

<sup>166</sup> For more background, see Sean Scalmer, “Nonviolence Meets Direct Action: A Transnational Encounter of the

Interwar Years,” Cambridge University Press, 29 Aug. 2025, <https://www.cambridge.org/core/journals/modern-intellectual-history/article/nonviolence-meets-direct-action-a-transnational-encounter-of-the-interwar-years/BDC901695DA16C7E8999DB4A8DD2F931>.

<sup>167</sup> Martin Luther King Jr., “Letter from a Birmingham Jail,” 16 Apr. 1963, available at [https://www.africa.upenn.edu/Articles\\_Gen/Letter\\_Birmingham.html](https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html).

<sup>168</sup> Wikipedia.org, “Nonviolent resistance,” [https://en.wikipedia.org/wiki/Nonviolent\\_resistance](https://en.wikipedia.org/wiki/Nonviolent_resistance).

<sup>169</sup> Except where otherwise cited, most of these examples come from Greenpeace USA (Greenpeace, Inc.), “Energy Transfer vs. Greenpeace trial analysis,” section 4, at note 29.

<sup>170</sup> Alleen Brown (@alleenbrown.bsky.social), Post on Bluesky, 28 Feb. 2025, <https://bsky.app/profile/did:plc:s7uayagc3l35lw5qsqyufzzv/post/3ljb5hhf6w22u>.

<sup>171</sup> Greenpeace Defendants’ Brief in Support of Motion for a New Trial, para. 134, at note 6.

<sup>172</sup> Greenpeace Defendants’ Brief in Support of Motion for a New Trial, para. 138, at note 6.

<sup>173</sup> Greenpeace Defendants’ Brief in Support of Motion for a New Trial, para. 186, at note 6. According to paragraph 186: “Plaintiffs repeatedly offered, and the Court admitted over Greenpeace Defendants’ repeated objections, testimony, photographs and videos that showed the attachment and removal of v-shaped lockboxes that a protestor could use to briefly connect themselves to construction equipment. ... This was pure misdirection. The only evidence presented of lockboxes used at Standing Rock was of lockboxes that were v-shaped, made of steel or PVC pipe, or used by an individual to lock themselves onto equipment. But the undisputed evidence is that, if Greenpeace, Inc. made lockboxes in 2016, those lockboxes would have been straight lockboxes, made of ABS pipe (an alternative to PVC), and only for use in connecting two people together—not for individual use, or for locking onto equipment. ... There is no evidence of a straight lockbox provided by Greenpeace, Inc. being used at Standing Rock, and no law enforcement witness testified that they encountered a straight lockbox made of ABS pipe. Nor did Greenpeace, Inc. employees train people to use the v-shaped lockboxes. ... Yet, the supply and use of lockboxes was a central tenet of Plaintiffs’ case. ...” (citations omitted)

<sup>174</sup> Greenpeace Defendants’ Brief in Support of Motion for a New Trial, paras. 180-185, at note 6. According to paragraph 185: “These errors created significant prejudice, as the admission of this evidence impermissibly suggested that the Greenpeace Defendants were running the trainings. Plaintiffs’ counsel took full advantage of that confusion, using the [nonviolent direct action (“NVDA”)] manual in his closing arguments to depict the Greenpeace Defendants as deceptive. He claimed that Greenpeace witnesses were ‘trying to hide from you what the truth is’ (including with ‘code words, anonymity, amnesia’), even going so far as to tell the jury that ‘[y]ou saw this, they didn’t want—they fought so hard, they did not want this document coming in, but it’s their own document, they wrote it.’ ... He told the jury that the NVDA manual illustrates how the Greenpeace Defendants teach people the ‘active refusal to obey certain laws’ and ‘be lawless.’ ... Had this evidence been properly excluded, Plaintiffs could not have made such inflammatory and misleading arguments.” (citations omitted)

<sup>175</sup> According to the Greenpeace defendants: “Greenpeace Defendants expect Plaintiffs to seek to introduce evidence of and from a Greenpeace manual that provides general guidelines for non-violent direct action training. However, every witness who testified has stated that no such manual was used at Standing Rock. Plaintiffs’ have no evidence the manual was used at Standing Rock. Because no Greenpeace document was used in the events Plaintiffs complain of evidence related to the manual is irrelevant to Plaintiffs’ claims. Moreover, the jury could be misled into thinking, without supporting evidence, that Greenpeace Defendants used or taught tactics described in the document at the Standing Rock protests, thus unfairly prejudicing Greenpeace Defendants. The Court should exclude this evidence.” (citations omitted) Brief in Support of Greenpeace Defendants’ Motions in Limine, para. 38, available as part of Exhibit 7, at note 30.

<sup>176</sup> The Indigenous Peoples Power Project (IP3) took this image of the “Direct Action Principles” used at the protests. The Standing Rock Sioux Tribe and IP3 developed the principles. The image is available on IP3’s website at <https://www.ip3action.org/who-we-are>.

<sup>177</sup> Greenpeace Defendants’ Brief in Support of Motion for a New Trial, paras. 60-66, 163-169, at note 6; see also N.D.C.C. § 32-03.2-02, <https://ndlegis.gov/cencode/t32c03-2.pdf>. According to North Dakota law: “Contributory fault does not bar recovery in an action by any person to recover damages for death or injury to person or property unless the fault was as great as the combined fault of all other persons who contribute to the injury, but any damages allowed must be diminished in proportion to the amount of contributing fault attributable to the person recovering. The court may, and when requested by any party, shall direct the jury to find separate special verdicts determining the amount of damages and the percentage of fault attributable to each person, whether or not a party, who contributed to the injury. The court shall then reduce the amount of such damages in proportion to the amount of fault attributable to the person recovering. When two or more parties are found to have contributed to the injury, the liability of each party is several only, and is not joint, and each party is liable only for the amount of damages attributable to the percentage of fault of that party, except that any persons who act in concert in committing a tortious act or aid or encourage the act, or ratifies or adopts the act for their benefit, are jointly liable for all damages attributable to their combined percentage of fault. Under this section, fault includes negligence, malpractice, absolute liability, dram shop liability, failure to warn, reckless

or willful conduct, assumption of risk, misuse of product, failure to avoid injury, and product liability, including product liability involving negligence or strict liability or breach of warranty for product defect.”

<sup>178</sup> In a post-trial motion for summary judgment, Greenpeace argued: “To the extent Plaintiffs tried to prove proximate cause for its aiding and abetting torts by circumstantial evidence, Plaintiffs were required to present ‘evidence which excludes other possible causes.’ ... The property damage Dakota Access complained of could have been caused by any number of the 100,000 individuals at Standing Rock who had no relationship with Greenpeace, Inc.—including those who brought their own supplies, conducted their own scouting and ran their own trainings. Yet Plaintiffs presented no evidence disproving those alternative causes or tortfeasors. That left the jury only to speculate impermissibly on whether the damages were attributable to Greenpeace, Inc. ...” (citations omitted) Notice of Greenpeace, Inc.’s Renewed Motion for Judgment as a Matter of Law, para. 66, at note 6.

<sup>179</sup> Greenpeace USA (Greenpeace, Inc.), “Energy Transfer vs. Greenpeace trial analysis,” section 3, at note 29.

<sup>180</sup> Alleen Brown (@alleenbrown.bsky.social), Post on Bluesky, 4 Mar. 2025, <https://bsky.app/profile/alleenbrown.bsky.social/post/3ljln5doijx27>.

<sup>181</sup> Alleen Brown (@alleenbrown.bsky.social), Post on Bluesky, 5 Mar. 2025, at note 150.

<sup>182</sup> Greenpeace Defendants’ Brief in Support of Motion for a New Trial, para. 73, at note 6. According to paragraph 73: “A court may grant a new trial when the verdict is manifestly against the weight of the evidence. In assessing this issue, “the trial court may, within limits, weigh the evidence and judge the credibility of witnesses.” Similarly, in determining whether the damages awarded are excessive, the North Dakota Supreme Court has identified three considerations that individually or together render a verdict excessive and require a new trial: [1] the amount is so unreasonable and extreme as to indicate passion or prejudice on the part of the jury, . . . [2] the award is so excessive as to be without support in the evidence, . . . [3] the jury verdict is so excessive as to appear clearly arbitrary, unjust, or such as to shock the judicial conscience.” (citations omitted)

<sup>183</sup> EarthRights International, “Energy Transfer Partners v. Greenpeace, BankTrack, et al.,” <https://earthrights.org/case/energy-transfer-partners-v-greenpeace-banktrack-et-al>.

<sup>184</sup> EarthRights International, “Energy Transfer Partners v. Krystal Two Bulls,” <https://earthrights.org/case/etp-v-krystal-two-bulls>.

