

**IN THE SUPREME COURT
FOR THE STATE OF NORTH DAKOTA**

Energy Transfer LP (formerly known as Energy Transfer Equity, L.P.); Energy Transfer Operating, L.P. (formerly known as Energy Transfer Partners, L.P.); and Dakota Access LLC,

Petitioners,

vs.

The Honorable Judge James D. Gion, Judge of the District Court, South Central Judicial District, Morton County; Greenpeace International (also known as “Stichting Greenpeace Council”); Greenpeace, Inc.; Greenpeace Fund, Inc.,

Respondents.

Supreme Court Case No. 20250341

Energy Transfer LP, et al. v. Greenpeace International, et al.
District Court Case No. 30-2019-CV-00180

GREENPEACE INTERNATIONAL’S PETITION FOR REHEARING

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I. PETITION FOR REHEARING

[¶1] Respondent Greenpeace International (“International”) hereby petitions the Court for rehearing pursuant to N.D.R.App.P. 40. For the reasons set forth in Chief Justice McEvers’ dissent, International maintains that Plaintiffs failed to demonstrate the district court abused its discretion in declining to grant their request for an antisuit injunction. Because this Court presumably has already fully considered those arguments, however, International does not seek rehearing on that ground. Instead, International requests that, consistent with the holding and reasoning of its Opinion, the Court reconsider two subsidiary aspects of its instructions to the district court.

[¶2] *First*, as this Court correctly recognized, a court must have personal jurisdiction over the party to be enjoined, and the party seeking an injunction must demonstrate by a preponderance of the evidence that the requirements for exercising such jurisdiction are satisfied. Op. at ¶¶ 15-16. But here, the district court has never determined whether Plaintiffs have made that showing. Instead, it has relied entirely on the proposition that Plaintiffs’ mere *allegations* in their complaint sufficed. The Court’s Opinion makes clear that this proposition is erroneous. And as Chief Justice McEvers observed, “if the district court is required, under the direction of the majority opinion, to issue an injunction, it should first determine whether the facts presented at trial support a finding of personal jurisdiction over [International].” Op. at ¶ 71 (McEvers, C.J., dissenting). International respectfully requests that the Court direct the district court to issue an injunction only if it first determines that Plaintiffs have established the court’s jurisdiction over International by a preponderance of the evidence.

[¶3] *Second*, this Court held that the standards for issuing an international anti-suit injunction were satisfied to the extent that International’s Dutch suit represents a “collateral

attack on the jury’s verdict.” Op. at ¶ 45. The Court’s Opinion noted however, that Plaintiffs have not prevailed on all their claims in the North Dakota action. *Id.* at ¶ 2. For example, the jury found all Plaintiffs’ property-tort claims against International unfounded. *Id.* International thus respectfully requests that the Court modify its Opinion to provide that the district court should—in the event it finds the evidence supports personal jurisdiction—enjoin International from pursuing only those Dutch claims that would require a finding that the North Dakota claims on which Plaintiffs *prevailed* in fact lacked foundation under North Dakota law.

II. ARGUMENT

A. The District Court Must First Determine It May Exercise Personal Jurisdiction Over International Before Issuing Any Injunction

[¶4] As this Court correctly recognized, “[b]efore the district court may issue an antisuit injunction, it must have personal jurisdiction over the party to be enjoined.” Op. at ¶ 15. After all, a showing that the defendant has the requisite “‘minimal contacts’ with that State [is] a prerequisite to its exercise of power over” that defendant. *Hanson v. Denckla*, 357 U.S. 235, 251 (1958). And as this Court also determined, “[t]he evidentiary burden for establishing personal jurisdiction changes as the litigation progresses.” Op. at ¶ 16. While the allegations in a plaintiffs’ complaint may suffice to make a prima facie showing at the motion-to-dismiss stage, ultimately the plaintiff bears the burden of establishing personal jurisdiction by a “preponderance of the evidence.” *Id.*; *see, e.g., Creative Calling Sols., Inc. v. LF Beauty Ltd.*, 799 F.3d 975, 979 (8th Cir. 2015).

[¶5] Here, however, the district court has never addressed whether Plaintiffs made the requisite evidentiary showing. Indeed, in its most recent order concerning personal jurisdiction, the district court acknowledged it had not evaluated whether the evidence

Plaintiffs presented at trial supported the exercise of jurisdiction over International. Ex. A, ¶ 4. Instead, the court simply quoted from a prior order denying International’s pre-answer motion to dismiss under Rule 12(b)(2) because the allegations in Plaintiffs’ complaint supposedly “made out a prima facie” case, declaring it had “already decided this issue and it need not revisit the decision.” *Id.* As this Court’s opinion makes clear, that was wrong as a matter of law. Although a “prima facie showing” may suffice “[a]t the motion-to-dismiss stage,” “[a]fter a trial resulting in a verdict, the jurisdictional question is resolved by the evidence adduced at trial.” *Op.* at ¶ 16. The district court has never resolved that jurisdictional question despite International’s repeated motions raising it.

[¶6] Nor, to the extent this Court’s Opinion suggests otherwise, can the jury’s verdict provide a basis for issuing an injunction without determining whether Plaintiffs have satisfied their burden. Even assuming the verdict might suffice for this Court to entertain the supervisory writ (*Op.* at ¶ 16), the verdict by no means absolves the district court of the obligation to assess personal jurisdiction before granting Plaintiffs the remedy they requested. First, personal jurisdiction is a question for the court, not the jury. *See Boit v. Gar-Tec Prods., Inc.*, 967 F.2d 671, 676-77 (1st Cir. 1992). The issue of “personal jurisdiction is a question of law” (*Nelson v. Pine View First Addition Ass’n*, 2025 ND 9, ¶ 9, 16 N.W.3d 172), and “questions of law are for the court.” *N. Pac. Ry. Co. v. Morton Cnty.*, 131 N.W.2d 557, 564 (N.D. 1964). Thus, the jury was not instructed on the constitutional requirements for exercising personal jurisdiction, and it made no determination as to whether Plaintiffs established that International created minimum contacts with this State. *See Pet. Ex. 5.* Second, even if the jury’s resolution of Plaintiffs’ tort claims were relevant, it would not support the exercise of personal jurisdiction. The

jury found *against* Plaintiffs on their property-tort claims against International—both (1) direct property-torts and (2) alleged aiding and abetting property-torts committed by others. *Id.* at 2-9. These were the sole possible claims under which International would have caused any relevant injury to Plaintiffs in North Dakota. The claims for which the jury found International liable all pertained to statements it joined abroad, directed to parties outside North Dakota, where any purported harm would only have occurred outside North Dakota—statements the federal district court (in a decision binding on Plaintiffs) expressly held do not suffice to establish personal jurisdiction in this State. *Energy Transfer Equity, LP v. Greenpeace Int’l*, 2018 WL 4677787, at *5-6 (D.N.D. July 24, 2018); *see* Int’l Resp. ¶¶ 66-77.

[¶7] This Court’s Opinion nevertheless instructs the district court to enter an injunction. Op. at ¶ 45. International respectfully submits that, as Chief Justice McEvers has explained, the Court should instead direct the district court to first assess whether Plaintiffs have met their burden of establishing personal jurisdiction over International by a preponderance of the evidence. *See id.* at ¶ 71 (McEvers, C.J., dissenting). If the district court determines Plaintiffs have met their burden, then the narrowly tailored injunction may be issued (though International will, of course, reserve its right to appeal that jurisdictional determination). What the district court cannot do—but what it would, under this Court’s opinion, be doing—is issue an injunction simply on the basis that Plaintiffs had previously *alleged* facts that *might* support personal jurisdiction.

B. International Should Be Permitted to Pursue Claims Premised on the Contention That Plaintiffs’ Failed Claims Were Unfounded

[¶8] This Court concluded that the district court abused its discretion by failing to appreciate that some aspects of International’s Dutch claims would “require[] the Dutch

court to determine that the North Dakota claims lacked legal merit,” thereby relitigating the “issues the jury resolved against [International] after a three-week trial.” Op. at ¶ 28. Such claims, this Court held, were vexatious because they “collaterally attack[ed]” the jury’s verdict, frustrated North Dakota’s policy “in protecting the finality and integrity of its judicial proceedings from improper collateral attacks,” and threatened to result in a judgment that “would directly contradict the North Dakota jury’s verdict.” Op. at ¶¶ 35-37.

[¶9] As the Court recognized, however, the majority of International’s Dutch suit did not represent such a collateral attack on the jury’s verdict. That includes International’s “claims premised on Energy Transfer’s dismissed federal RICO suit and on alleged out-of-court defamatory statements” and its claims under the ““abusive court proceedings’ prong of Articles 14 and 15.” Op. at ¶ 44-45.

[¶10] But the Court omitted from this list another category of claims that cannot plausibly be said to collaterally attack the jury’s verdict: those premised on the assertion that the North Dakota claims on which Plaintiffs did *not* prevail were unfounded. For example, the jury found against Plaintiffs on all their claims that International committed property torts in North Dakota and aided and abetted others in committing property torts in this state. *See* Pet. Ex. 5 at 2-9. International’s assertion that those claims were “manifestly unfounded” thus could not “collaterally attack[]” or “directly contradict the North Dakota jury’s verdict.” Op. at ¶¶ 35-37. The same goes for any claims that the jury resolved in Plaintiffs’ favor but either the district court or this Court ultimately determines lack merit. If either the jury or the court has found that Plaintiffs’ claims fail, permitting International to press the same contention in the Dutch action would not implicate any of

the concerns this Court held would warrant the extraordinary remedy of an international antisuit injunction. *Id.* at ¶¶ 35-37, 45.

[¶11] The Court’s Opinion, however, directs the district court to “enjoin [International] from pursuing any claim in the Dutch action whose elements require, as pleaded, a finding that the North Dakota *case* lacked legal foundation”—seemingly precluding International from pursuing such claims even if the North Dakota jury or court *agreed* with International. *Id.* at ¶ 45 (emphasis added). International thus respectfully requests that this Court modify its decision to instead direct that any injunction the district court issues should preclude International only from pursuing claims in the Dutch action whose elements require, as pleaded, a finding that the North Dakota claims on which Plaintiffs have *prevailed* before the jury and North Dakota courts lacked legal foundation under North Dakota law. Only with respect to such claims could the standards for issuing an international antisuit injunction even arguably be satisfied.

III. CONCLUSION

[¶12] For the reasons stated above, International respectfully requests that this Court grant its Petition for Rehearing.

Respectfully submitted this 21st day of May, 2026.

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CERTIFICATE OF COMPLIANCE

The undersigned, as attorney for the Respondent in the above matter, and as the author of the above brief, hereby certifies, in compliance with Rule 32(c) of the North Dakota Rules of Appellate Procedure, that the above petition was prepared with a plain, roman type style in a size 12-point font and that the brief totals 10 pages.

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Case No. 30-2019-CV-00180

Energy Transfer LP, (formerly known as)
 Energy Transfer Equity, L.P.), Energy)
 Transfer Operating, L.P. (formerly known)
 As Energy Transfer Partners, L.P., and)
 Dakota Access, L.L.C.,)
 Plaintiffs,)

-vs-

MEMORANDUM OPINION DENYING
 MOTION FOR RECONSIDERATION

Greenpeace International (also known as)
 “Stichting Greenpeace Council”;)
 Greenpeace Inc.; Greenpeace Fund, Inc.)
 Red Warrior Society (also known as “Red)
 Warrior Camp; Cody Hall and Krystal Two)
 Bulls;)
 Defendants.)

¶ 1. The Greenpeace Defendants (Greenpeace International, Greenpeace Inc. and Greenpeace Fund, Inc.) requested the Court reconsider the Court’s October 28, 2025 Memorandum Opinion on the Motions for Judgment as a Matter of Law; Motions for Reduction in Damages, Motion for Order for Judgment and Motion for Extension of the Automatic Stay. The Plaintiffs (ET and DAP) resisted the Motion for Reconsideration, and requested the Court grant their Motion for Order for Judgment. The Court heard oral argument on January 23, 2026.

¶ 2. Initially, ET and DAP challenged the reconsideration of the Memorandum Opinion, claiming since no final judgment was entered, the motion for reconsideration was premature.

Rule 54(b), N.D.R.Civ.P., states:

. . . Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be

revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

In Dinger ex rel. Dinger v. Strata Corp., 2000 ND 41, ¶ 11, 607 N.W.2d 886, the North Dakota Supreme Court applied this rule to reconsideration of a summary judgment order:

Because the order granting summary judgment was not certified as a final judgment under Rule 54, Dingers' motion for reconsideration of the trial court's order granting summary judgment was proper. As we noted in Union State Bank v. Woell, 357 N.W.2d 234, 239 (N.D. 1984), the summary judgment, as an interlocutory order, "remains subject to revision by the court at any time before the entry of judgment adjudicating all claims between all parties."

The North Dakota Supreme Court further elaborated on this concept in Ceynar v. Bart, 2017 ND 286, ¶ 7, 904 N.W.2d 469, stating:

Ceynar's reliance on N.D.R.Civ.P. 60(b) is misplaced. Rule 60(b) does not apply to interlocutory judgments and orders. Thompson v. Goetz, 455 N.W.2d 580, 585 (N.D. 1990). "Interlocutory orders of any kind are ordinarily subject to reconsideration and change without the restrictions applicable to reconsideration and changes in 'final' judgments." Cumber v. Cumber, 326 N.W.2d 194, 195 (N.D. 1982). The denial of a motion for summary judgment is an interlocutory order leaving a case pending for trial and decides nothing, except that the parties may proceed with the case. Herzog v. Yuill, 399 N.W.2d 287, 293 (N.D. 1987). An interlocutory order "may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." N.D.R.Civ.P. 54(b). "When a district court is convinced that it incorrectly decided a legal question in an interlocutory ruling, the district court may correct the decision to avoid later reversal." Strom-Sell v. Council for Concerned Citizens, Inc., 1999 ND 132, ¶ 12, 597 N.W.2d 414 (internal citation omitted).

Accordingly, it is clear that the motion to reconsider is permissible and is not grounds for denying the motion because any decision entered prior to judgment is subject to revision at any time. Rather than looking to N.D.R.Civ.P. 60(b), the Court considered the motion as being under N.D.R.Civ.P. 54(b), since there has been no judgment entered here.

¶ 4. Greenpeace International correctly argues this Court did not address its personal jurisdiction argument in its October 28 memorandum opinion. However, this issue was previously decided by the district court on February 13, 2020, when the Court denied

Greenpeace's motion to dismiss the complaint for both failure to state a claim and lack of personal jurisdiction. In analyzing the personal jurisdiction issue, the district court quoted N.D.R.Civ.P. 4(b)(2) and then reasoned:

GPI appeared in the federal case, which was remanded. A party's right to object to personal jurisdiction can be waived. Larson v. Dunn, 474 N.W.2d 34, 36 (N.D. 1991). The Court, however, need not decide this because there is personal jurisdiction of GPI by contact. It committed tortuous acts outside the state causing injury to persons or property in the state. Here, Plaintiffs have made out a prima facie cause of action for defamation.

Index # 242, ¶¶ 4- 5. The Court already decided this issue and it need not revisit the decision.

¶ 5. Greenpeace argues a lack of evidence showing the alleged defamatory statements were made with actual malice and states the Court failed to address the standard for proving actual malice, nor did the Court identify any evidence that could satisfy that standard.

The exact language included in the Memorandum Opinion states:

GP and GPI challenge the jury's findings on four points – 1) the statements made were not actionably false because the statements expressed public views on matters subject to public debate; 2) No evidence was presented the statements were made with actual malice as required under the First Amendment; 3) ET provided no evidence any third party believed any of the statements were defamatory; and 4) ET failed to provide evidence the alleged defamatory statements proximately caused any damages. In addressing the actual malice component, GP and GPI claimed to be entitled to rely on statements made by the United Nations, the Standing Rock Sioux Tribe, other indigenous people, and other credible sources. GP and GPI further claimed they were not required to conduct research into, or present ET's position of the substance of the statements; and that any GP or GPI employees' communications reflecting a personal animus toward ET or DA between themselves are insufficient to support actual malice.

ET responds with reference to the documents and testimony presented to the jury indicating the statements were defamatory, and that ET and DA suffered damages from the statements. GP and GPI contested the evidence presented, but the Court cannot find the jury could not reach the conclusion it did. GP and GPI's motions for judgment as a matter of law on the issue of defamation are denied.

. The Court stands by its ruling in the Memorandum Opinion.

¶ 6. Greenpeace International and Greenpeace Fund, Inc. both argue the award of damages against them vastly exceeded any harm those two defendants could have possibly caused, relying on Johnson v. Monsanto Co., 303 N.W.2d 86, 92 (N.D. 1981), which stated:

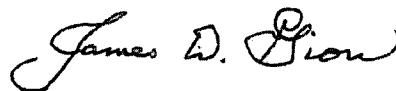
The determination of the amount of damages is in the province of the jury and rests largely in the discretion of the jury. Froemke v. Hauff, 147 N.W.2d 390 (N.D. 1966). Nevertheless, the jury must determine the compensation to which a party is entitled within reasonable limits, based upon the evidence. If those limits have been exceeded, it is the duty of the court to make a proper reduction or grant a new trial.

Both the Plaintiffs and Defendants provided evidence as to damages. The jury heard that evidence and made their decision. Sufficient evidence existed to support the jury verdict. While the Defendants disagree with the damages claimed by ET and DAP, the jury must have found the evidence presented by the Plaintiffs to be more credible. The Court sees no reason to change the Court's decision.

¶ 7. The Court denies the Motion for Reconsideration of the Greenpeace Defendants.

Dated this 24th day of February, 2026.

BY THE COURT:

A handwritten signature in cursive script that reads "James D. Gion".

James D. Gion, Judge

CERTIFICATE OF SERVICE

Supreme Court Case No. 20250341
Morton County Case No.: 30-2019-CV-00180

Energy Transfer LP, et. al.,

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v.

The Honorable Judge James D. Gion,
Greenpeace International, et. al.,

Respondents.

I hereby certify that on May 21, 2026 the following document:

Greenpeace International’s Petition for Rehearing

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To the best knowledge of the undersigned, the addresses given above are the actual addresses of the parties intended to be served. The above documents were served in accordance with the provisions of the North Dakota Rules of Appellate Procedure.

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