

No. _____

In the Supreme Court 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,

v.

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.; Red Warrior Society (also known as “Red Warrior Camp”); Cody
Hall; and Krystal Two Bulls,

Respondents.

Original Proceeding from District Court Case No. 30-2019-cv-00180

PETITION FOR SUPERVISORY WRIT

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ISSUE PRESENTED

[¶1] On the eve of trial in Morton County, Greenpeace ran to Amsterdam, seeking “protection” against this suit on the grounds that it’s “manifestly unfounded” and that Energy Transfer “wrongly has not withdrawn” it. (E1:7¶10; E1:40:¶169; E1:14:¶52). Greenpeace asked the Dutch court to declare Energy Transfer’s case—a case in which the Morton County jury unanimously found against Greenpeace International, Greenpeace, Inc., and Greenpeace Fund and awarded nearly \$670 million in damages—a “strategic lawsuit against public participation” under European and Dutch law, a declaration that would purportedly provide Greenpeace with “protection against enforcement of [the] judgment” issued in this case. (E1:6:¶6; E1:30:¶124). The issue presented is:

[¶2] Does the district court’s refusal to enjoin Greenpeace from pursuing its Dutch action—which collaterally attacks the jury verdict, and seeks to block enforcement of the judgment, in this case—affect fundamental interests and require a supervisory writ to prevent injustice?

JURISDICTIONAL STATEMENT

[¶3] This Court has authority to issue a supervisory writ under Article VI, Section 2 of the North Dakota Constitution, and Section 27-02-04 of the Century Code.

INTRODUCTION

[¶4] After more than five years of litigation and a three-week trial, a unanimous Morton County jury returned a resounding verdict against the Greenpeace Defendants on twelve claims. The jury awarded Energy Transfer more than \$130 million, confirming Greenpeace’s liability for conspiracy, tortious interference, and defamation.

[¶5] On the eve of trial, one of the Greenpeace defendants—Greenpeace International (referred to here as “Greenpeace”)—ran to Amsterdam, seeking “protection” against this suit. (E1:7¶10). It asked the Dutch court to hold that “Energy Transfer’s claims are manifestly unfounded,” and declare that this case is a “strategic lawsuit against public participation” under European and Dutch law—a declaration that’d not only permit Greenpeace to recover its “damages” from litigating this case but also provide “protection against enforcement of [the] judgment . . . in this case.” (E1:37:¶157; E1:30:¶124).

[¶6] To prevent Greenpeace from haling it to Europe just to relitigate the same issues that were litigated here, to protect North Dakota’s jurisdiction and ability to afford meaningful relief, and to guard against inconsistent judgments, Energy Transfer asked the district court to enjoin Greenpeace from proceeding with its duplicative and vexatious Dutch suit.

[¶7] The district court refused, concluding that there was no meaningful overlap between the two cases because “North Dakota does not recognize a SLAPP or anti-SLAPP action.” (E2:6, 8:¶¶7, 10). But that elevates form over

substance. Greenpeace is asking the Dutch court to hold that this suit is “manifestly unfounded.” (E1:29:¶122; E1:35:¶154; E1:37–38:¶157). There can be no doubt that such a ruling would directly and irreconcilably conflict with the jury’s unanimous, nine-figure verdict for Energy Transfer. In its Dutch pleadings, Greenpeace didn’t mince its words about its ultimate goal: “Energy Transfer ought to withdraw the State Lawsuit.” (E1:35:¶154).

[¶8] This Court’s intervention is needed to prevent a foreign entity (Greenpeace) from inviting a foreign tribunal to sit in judgment over North Dakota’s judiciary. A unanimous Morton County jury found that the Greenpeace defendants engaged in serious misconduct and caused hundreds of millions of dollars in damages. Greenpeace’s European end-run—asking a Dutch court to declare this case “manifestly unfounded,” which Greenpeace hopes will bar enforcement of any judgment—is a flagrant, collateral attack on the proceedings in this case, and an affront to North Dakota’s sovereignty.

[¶9] To ensure North Dakota verdicts can’t be vetoed abroad, this Court should issue a supervisory writ and instruct the district court to block Greenpeace from pursuing its Dutch suit.

STATEMENT OF THE CASE

I. Greenpeace engages in an extensive, unlawful campaign to block construction of the Dakota Access Pipeline.

[¶10] This case is about the Greenpeace defendants’ unlawful campaign to stop construction of the Dakota Access Pipeline and their ongoing effort to evade accountability for the destruction they caused in North Dakota. As a

North Dakota jury recently found, the Greenpeace defendants supported and funded protests that wreaked havoc across the State—trampling property, terrorizing landowners, threatening workers, violently resisting law enforcement, and defaming Energy Transfer.¹

[¶11] In 2016, tens of thousands of protestors descended on North Dakota to oppose the Dakota Access Pipeline, a 1,772-mile underground pipeline designed to transport roughly half a million barrels of crude oil per day from North Dakota to Illinois. (E3:5–6:¶ 14; E3:20–29:¶¶52–76). What followed was unprecedented property destruction, violence, trespass, and misinformation—perpetrated and orchestrated by the Greenpeace defendants and others to obstruct the project and disrupt Energy Transfer’s business relationships. (E3:12–20:¶¶35–51).

[¶12] As one federal court observed, “one need[ed] only turn on a television set or read any newspaper” to see protestors chaining themselves to equipment, vandalizing machinery, trespassing on private land, obstructing work, and taunting law enforcement. *Dakota Access, LLC v. Archambault*, 2016 WL 5107005, at *2 (D.N.D. Sept. 16, 2016).

¹ “Energy Transfer” refers to Energy Transfer LP; Energy Transfer Operating, L.P.; and Dakota Access, LLC collectively. And, unless otherwise noted, “Greenpeace” refers to Greenpeace International—the plaintiff in the Dutch litigation.

II. Energy Transfer files suit to hold the Greenpeace defendants accountable for their misconduct; the jury unanimously finds for Energy Transfer.

[¶13] The Greenpeace defendants’ campaign delayed construction and caused tens of millions of dollars in damage. In 2019, Energy Transfer sued the Greenpeace defendants to recover its losses, asserting claims for trespass, conversion, nuisance, aiding and abetting, conspiracy, defamation (including per se), and tortious interference. (E3; E4). After years of litigation, the case proceeded to trial on February 24, 2025.

[¶14] After three weeks of evidence, a North Dakota jury found Greenpeace liable for conspiracy, tortious interference, defamation, and defamation per se, and awarded \$131,889,740 in damages against that particular entity. (E5).²

III. Greenpeace collaterally attacks the North Dakota litigation in Amsterdam, asking a Dutch court to declare this case “manifestly unfounded and abusive.”

[¶15] Months before trial, Greenpeace previewed its foreign strategy. In a letter sent to Energy Transfer on the eve of the originally-scheduled trial (in July 2024), Greenpeace said: “There were and are still no grounds whatsoever for any of [Energy Transfer]’s claims” and Energy Transfer “has not been able, and will not ever be able, to show evidence of any tort committed” by

² The jury awarded \$403,990,330 in damages against Greenpeace Inc. and \$131,009,950 against Greenpeace Fund. (E5).

Greenpeace. (E6:4).³ Greenpeace further argued that North Dakota was “favorable terrain for these sorts of defamation lawsuits” precisely because “in North Dakota state law there is no anti-SLAPP statute.” (E6:4).

[¶16] The fundamental premise of Greenpeace’s foreign case, therefore, isn’t just to challenge the verdict and enforceability of the judgment in this litigation, but also to attack the North Dakota legislature’s policy choice not to enact an anti-SLAPP law. As Greenpeace’s Dutch complaint itself explains, the new EU Directive “pays particular attention to the threat posed by SLAPPs brought in third countries (i.e., outside the EU).” (E1:28:¶118).

[¶17] Less than two weeks before the Morton County trial began, Greenpeace filed suit in the Netherlands. It alleged that Energy Transfer’s North Dakota action itself constitutes a Dutch tort (*onrechtmatige daad*), because it’s allegedly a “manifestly unfounded and abusive” strategic lawsuit against public participation under the EU’s new anti-SLAPP directive. (E1:40:¶169). In that filing, Greenpeace claimed it “continues to suffer significant damage as a result of [Energy Transfer]’s actions, in particular because [Energy Transfer] chooses to continue the State Lawsuit,” and that “Energy Transfer’s tortious and injurious actions against [Greenpeace] are all the more objectionable given that Energy Transfer . . . has expressly refused to cease its injurious actions

³ This case was originally set for trial in July 2024, but the Court granted the Greenpeace defendants’ motion to continue the trial to February 2025.

and has indicated that it will pursue the State Lawsuit against [Greenpeace] to its full extent.” (E1:8; E1:40:¶166).

[¶18] The jury’s unanimous verdict conclusively refutes any suggestion that Energy Transfer’s claims are “manifestly unfounded.” But rather than respect that verdict—or follow North Dakota’s well-established procedures for challenging it through post-trial motions and appeal—Greenpeace doubled down on its Dutch suit.

[¶19] At bottom, Greenpeace wants to leverage the Dutch case to force Energy Transfer to dismiss this case. Greenpeace is asking the Dutch court to hold that this suit—and Energy Transfer’s claims—are “manifestly unfounded.” (E1:15–16:¶54). That request can’t be squared with a unanimous jury verdict against Greenpeace awarding Energy Transfer more than \$130 million in damages. It simply can’t be the case that Energy Transfer’s claims are “manifestly unfounded” while at the same time a Morton County jury—after a three-week trial—found Greenpeace liable for conspiracy, tortious interference, and defamation and awarded nine-figure damages. The Dutch action is thus a direct attack on the verdict, and on the legitimacy of North Dakota’s judicial process itself.

[¶20] To support that attack, Greenpeace disparages North Dakota and its courts, complaining about recusals, the size of the court, the jury pool, the complexity of the case, and even the time it took to resolve summary-judgment motions. (E1:16–18:¶¶58–67). Those arguments underscore that Greenpeace

isn't merely defending itself abroad; it's putting North Dakota's courts and laws on trial before a foreign tribunal. The Dutch complaint also repackages rejected defenses and invites a foreign court to overturn findings that the district court and jury have already resolved, including:

- **Greenpeace's involvement.** Greenpeace's argument that its only role was signing a letter attacks the jury's finding that Greenpeace was deeply involved in the unlawful campaign against the Dakota Access Pipeline. (E7:¶2; E1:12:¶38). The jury rejected that defense and held Greenpeace liable for conspiracy, tortious interference, and defamation.
- **Causation.** Greenpeace's contention that Energy Transfer can't prove a causal link between Greenpeace's conduct and Energy Transfer's losses attacks the jury's causation finding. (E7:¶45; E1:18:¶65(d)). The jury found that Greenpeace caused \$130 million in damages.
- **Exemplary damages.** Greenpeace's insistence that there's no basis for exemplary damages attacks the jury's exemplary damages award. (E7:¶58; E1:12:¶66). The jury rejected that claim and expressly awarded exemplary damages.

[¶21] Greenpeace's Dutch complaint goes even further than seeking a declaration that the North Dakota action is "manifestly unfounded." It asks the Dutch court to order Energy Transfer to pay damages for bringing and continuing to litigate this case. According to Greenpeace, its "damages" include not only the attorneys' fees it incurred in North Dakota, but also any amounts it's ultimately required to pay Energy Transfer. (E1:37:¶156). That is, Greenpeace asks a foreign tribunal to transform Energy Transfer's hard-won victory into liability against the prevailing party.

[¶22] Greenpeace also seeks something even more sweeping—“protection against enforcement” of any judgment entered in this case. (E1:30:¶124). That request underscores the extraordinary nature of Greenpeace’s attack. It’s not enough to relitigate this case abroad—Greenpeace wants to ensure that, no matter what happens in this case, it’ll never be called to account. If accepted, that relief would nullify North Dakota’s judicial authority altogether, rendering a unanimous jury verdict and any subsequent judgment meaningless within the EU.

IV. To protect the authority of the North Dakota courts and the integrity of the jury’s verdict, Energy Transfer asks the district court to enjoin Greenpeace from proceeding with its Dutch suit.

[¶23] To preserve the authority of North Dakota’s courts and the integrity of the jury’s verdict, Energy Transfer moved the district court for an emergency anti-suit injunction barring Greenpeace from proceeding with its action in the Netherlands. (E8).

[¶24] Anti-suit injunctions exist for precisely these circumstances. They are an established equitable remedy used to block duplicative, harassing litigation that seeks to relitigate issues already decided, to protect against inconsistent judgments, and to safeguard the forum court’s jurisdiction from collateral attack. *See, e.g., Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 927–28 (D.C. Cir. 1984).

[¶25] The district court acknowledged both its equitable authority to issue such relief and that the Dutch proceeding was connected to the North Dakota case.

[¶26] Nonetheless, the court denied relief, reasoning that Greenpeace’s Dutch action was different because it was styled as an “anti-SLAPP” claim. (E2).

[¶27] In doing so, the court placed undue weight on the label of the claim rather than its substance. What matters isn’t the caption—it’s what Greenpeace must prove and the relief it seeks: a declaration that the North Dakota suit is “manifestly unfounded,” an award of damages (including any sums owed under the North Dakota judgment), and protection against enforcement of that judgment within the EU. By treating the Dutch action as categorically distinct, the court concluded there was no overlap of issues, that the suit wasn’t vexatious, and that comity weighed against relief—even though each of those conclusions is difficult to reconcile with the reality that a unanimous jury has already determined this case isn’t “unfounded.”

[¶28] Absent this Court’s intervention, Energy Transfer will be forced to relitigate the merits of this case in Amsterdam, at great expense and with the risk of an inconsistent ruling that undermines the jury’s verdict and North Dakota’s judicial authority. Indeed, the district court itself invited this Court’s review, noting that a supervisory writ “may address the matter more expeditiously.” (E2:9:¶12). Only supervisory relief can safeguard the “proper exercise of [this Court’s] jurisdiction,” protect the parties “against collateral

attack,” and preserve the finality of the jury’s verdict. N.D. Const. art. VI, § 8; *In re Edinger’s Estate*, 136 N.W.2d 114, 120–21 (N.D. 1965).

SUMMARY OF THE ARGUMENT

[¶29] **I.** This is an extraordinary case, which requires this Court’s supervisory review. Absent this Court’s intervention, Energy Transfer will be forced to relitigate the merits of this case in Amsterdam. And Greenpeace will be permitted to end-run North Dakota’s appellate process and continue its collateral attack on the Morton County jury’s unanimous verdict and on North Dakota’s judiciary more broadly. Greenpeace’s Dutch suit risks not only inconsistent judgments and wasteful, duplicative litigation—it jeopardizes Energy Transfer’s ability to enforce any judgment the North Dakota courts enter against Greenpeace in this case. These are precisely the types of fundamental public and private interests that merit the exercise of this Court’s supervisory jurisdiction.

[¶30] **II.** This is a paradigmatic case for an anti-suit injunction. Greenpeace’s Dutch suit is a frontal assault on North Dakota and its judiciary.

[¶31] Greenpeace’s Dutch action directly depends on relitigating the merits of this case, since **(A)** proving the North Dakota lawsuit is “manifestly unfounded” requires a foreign court to reject the jury’s findings on Greenpeace’s involvement, causation, and malice; that overlap alone compels an injunction. **(B)** The Dutch action is also vexatious and inequitable: filed on the eve of trial after six years of litigation, it seeks to harass the prevailing

party, multiply proceedings, and undo a unanimous verdict by rebranding settled issues under a foreign anti-SLAPP theory. North Dakota law has long recognized that vexatious conduct includes attempts to hinder the administration of justice and force parties into duplicative litigation, and Greenpeace's Dutch complaint meets that standard many times over. Finally, (C) comity doesn't weigh against relief. This case was filed first, litigated through trial, and resolved by a jury, while the Dutch case is a belated collateral attack that undermines this State's sovereign policy choices and judicial authority. Respect for comity requires foreign courts to defer to the judgment rendered here, not vice versa.

SUPERVISORY WRIT STANDARD

[¶32] This Court hasn't hesitated to exercise its supervisory jurisdiction to review orders granting or denying interim injunction relief if the order affects private litigants' fundamental interests or concerns a matter of important public interest. *Black Gold OilField Servs., LLC v. City of Williston*, 2016 ND 30, ¶¶ 9–10, 875 N.W.2d 515 (exercising supervisory jurisdiction over district court's order denying preliminary injunction); *see also* N.D. Const. art. VI, § 2.

[¶33] This Court reviews an order denying injunctive relief for an abuse of discretion, which occurs when a court misinterprets or misapplies the law, or acts in an arbitrary, unreasonable, or unconscionable manner. *Black Gold*, 2016 ND 30, ¶ 12.

ARGUMENT

I. This Court’s supervisory review is warranted because this case implicates fundamental private interests *and* important public interests.

[¶34] This Court exercises supervisory jurisdiction when an order “affect[s] fundamental interests of the litigants” or presents “matters of important public interest.” *Black Gold*, 2016 ND 30 ¶ 10; *see ND Indoor RV Park, LLC v. State ex rel. N.D. Dep’t of Health*, 2025 ND 92 ¶ 14, 20 N.W.3d 686. Both conditions are satisfied here: Greenpeace’s Dutch action directly **(A)** threatens Energy Transfer’s ability to preserve its \$131 million verdict against Greenpeace, and **(B)** undermines the authority of North Dakota courts to render final, binding decisions.

A. Greenpeace’s Dutch action threatens Energy Transfer’s most fundamental private interests.

[¶35] The district court’s refusal to enjoin Greenpeace’s Dutch action imperils Energy Transfer’s ability to preserve and ultimately enforce the \$131,889,740 verdict it lawfully obtained against that entity after a three-week trial. Final judgment hasn’t even been entered yet, and appellate review remains outstanding. Greenpeace nevertheless seeks to preempt that process by asking a Dutch court to brand the case “manifestly unfounded” and to impose damages designed to erase the verdict. If allowed to proceed, the Dutch action would cast immediate doubt on the enforceability of any North Dakota judgment before it’s even rendered.

[¶36] That isn't a routine litigation burden—it's an existential threat to Energy Transfer's right to secure "the full and complete administration of justice" and to "carr[y] into effect" the jury's verdict. *Matrix Props. Corp. v. TAG Invs.*, 2002 ND 86 ¶ 19, 644 N.W.2d 601 (quoting N.D.C.C. § 27-05-06(3)).

[¶37] North Dakota law also protects a litigant's right to be free from harassing, vexatious, repeat litigation. *Fed. Land Bank of St. Paul v. Ziebarth*, 520 N.W.2d 51, 58 (N.D. 1994). The Dutch action is just that: an effort to force Energy Transfer into a second round of litigation on issues already tried and decided. Litigating the same dispute in Amsterdam and Bismarck simultaneously wastes enormous resources, imposes duplicative costs, and risks inconsistent rulings. Those burdens are precisely the sort of burdens this Court has long granted injunctive relief to prevent. *See, e.g., id.* (enjoining "attempts to relitigate issues" already decided).

[¶38] The inefficiency is underscored by the European Union's own anti-SLAPP directive, which contemplates that parties may seek protection in their home courts *after* foreign proceedings conclude. (E9:12:art. 17(2)). There's no legitimate reason to ask a Dutch court now to declare this case "manifestly unfounded" while it's still being litigated on the merits in North Dakota and subject to appellate review in this Court.

B. Greenpeace’s Dutch action also threatens important public interests and falls squarely within North Dakota courts’ authority to prevent collateral attacks.

[¶39] North Dakota has a sovereign interest in ensuring that its courts—not foreign tribunals—decide the validity of North Dakota lawsuits. The Constitution guarantees that the right to trial by jury shall “remain inviolate,” and it empowers courts to issue writs “necessary to the proper exercise of [their] jurisdiction.” N.D. Const. art. I, § 13; N.D. Const. art. VI, § 8. Those guarantees mean little if a foreign court can relitigate the merits of a pending case and declare a unanimous jury verdict “unfounded.”

[¶40] North Dakota law already provides a clear and orderly avenue for challenging a judgment—post-trial motions and appellate review. Greenpeace’s retaliatory Dutch suit seeks to end-run that process, depriving North Dakota courts of their constitutional role and stripping the State of its ability to provide meaningful relief.

[¶41] This Court’s precedent confirms that regular channels for appellate review are the proper means of challenging a judgment—not collateral lawsuits in foreign courts. In *Federal Land Bank*, this Court upheld an injunction against a party who repeatedly tried to reopen settled matters, emphasizing courts’ inherent power to “protect [their] jurisdiction and judgments, the integrity of the court, and the orderly and expeditious administration of justice.” 520 N.W.2d at 58. Likewise, in *State ex rel. Employees of State Penitentiary v. Jensen*, the Court approved injunctive relief

to halt harassing lien filings that threatened irreparable harm and undermined the judicial process. 331 N.W.2d 42, 47–48 (N.D. 1983). And in *Holkesvig v. Welte*, the Court affirmed an injunction barring a litigant from filing new lawsuits that were “simply attempting to relitigate the same claims and issues” already decided. 2012 ND 142 ¶ 10, 818 N.W.2d 760. The principle is consistent: when judgments are under assault—whether by repetitive filings or other collateral tactics—North Dakota courts act to stop it.

[¶42] That logic applies with equal force to collateral attacks launched in foreign jurisdictions. Courts nationwide—from state supreme courts to federal appellate courts—have long recognized that anti-suit injunctions are essential to protect an American court’s authority and preserve the integrity of its judgments. *See, e.g., Laker Airways*, 731 F.2d at 927 (courts must protect “their legitimately conferred jurisdiction to the extent necessary to provide full justice to litigants”).⁴

⁴ *See also Lee v. Grimblat*, 234 A.D.3d 491, 491 (N.Y. App. Div. 2025) (reversing denial of anti-suit injunction, because “the courts of this state are entitled to protect [their] judgment[s] by enjoining plaintiff against pursuing [a foreign] proceeding”); *First State Ins. Co. v. Minn. Mining & Mfg. Co.*, 535 N.W.2d 684, 687 (Minn. Ct. App. 1995) (“It has long been the law in Minnesota that a court may enjoin a party over whom it has in personam jurisdiction from pursuing similar litigation in another court.”).

[¶43] This Court has articulated the same principle: “One of the recognized grounds for granting an injunction is the prevention of multiplicity of suits.” *Shark Bros., Inc. v. Cass Cnty.*, 256 N.W.2d 701, 704 (N.D. 1977); *accord Wade v. Major*, 162 N.W. 399, 401 (N.D. 1917) (Christianson, J., dissenting). And the need for such injunctions is at its pinnacle when a litigant institutes a foreign action “in a blatant attempt to evade the rightful authority of the forum court.” *Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren*, 361 F.3d 11, 20 (1st Cir. 2004).

[¶44] The procedural posture here makes an injunction particularly compelling. This case was filed first, has been litigated for six years, and a unanimous jury rendered its verdict (among the largest jury verdicts in North Dakota history). Greenpeace’s Dutch action on the other was filed on the eve of the trial in this case.

[¶45] As a Texas appellate court explained in granting similar relief: “We are aware of no authority that would have a court, after rendering final judgment, defer to a foreign court for some *in futuro* action. If anything, we would expect the foreign jurisdiction to invoke comity in the [domestic] court’s favor.” *Bridas Corp. v. Unocal Corp.*, 16 S.W.3d 887, 892 (Tex. App.—Houston [14th Dist.] 2000, pet. dism’d w.o.j.); *accord London Mkt. Insurers v. Am. Home Assur. Co.*, 95 S.W.3d 702, 706 (Tex. App.—Corpus Christi 2003, no pet.).

[¶46] Greenpeace’s Dutch suit is a textbook example of the kind of collateral attack courts routinely enjoin. It repackages defenses that the jury rejected,

seeks to relitigate settled issues under foreign law, and demands damages designed to erase the verdict.

[¶47] Worse still, Greenpeace is attempting to bypass the ordinary North Dakota appellate process, instead inviting a foreign court to sit in judgment of—and ultimately to nullify a unanimous jury verdict in—North Dakota’s judiciary, all before this Court has the opportunity to exercise appellate review in the ordinary course.

[¶48] Greenpeace’s Dutch suit isn’t a legitimate parallel proceeding—it’s a strategic end-run around North Dakota’s judiciary. Just as in *Federal Land Bank* and *Holkesvig*, where this Court acted to protect judgments from duplicative or harassing litigation, it should act here to prevent Greenpeace from undermining a North Dakota verdict through a foreign collateral attack.

II. Greenpeace’s Dutch action is exactly the type of collateral litigation that anti-suit injunctions exist to prevent.

[¶49] An anti-suit injunction is warranted here. The Dutch action isn’t a legitimate parallel proceeding; it’s a collateral attack designed to nullify a North Dakota jury verdict. The district court’s failure to grant relief is attributable to one simple but fundamental error: it elevated form over substance by focusing on the label attached to Greenpeace’s Dutch cause of action (an “anti-SLAPP” action) rather than the substance of what that claim requires Greenpeace to prove and the consequences of prevailing. *See* N.D.C.C. § 31-11-05(19) (“The law respects form less than substance.”). Examining the substance makes clear that an injunction is necessary. To succeed in

Amsterdam, Greenpeace must establish that this case is “manifestly unfounded.”

[¶50] In asking the Dutch court to declare this lawsuit a “strategic lawsuit against public participation” under EU and Dutch law, Greenpeace is in substance asking a foreign tribunal to overturn a North Dakota jury’s unanimous verdict in two independent ways. First, Greenpeace seeks to recover from Energy Transfer not only the attorneys’ fees it incurred in this case, but also any amounts it’s ordered to pay under the North Dakota judgment. Second, Greenpeace acknowledges that a declaration that this action is “manifestly unfounded” would bar recognition or enforcement of any North Dakota judgment in every EU member state.

[¶51] Properly framed, the inquiry is straightforward. Courts assessing anti-suit injunctions generally ask three questions:

- (A) Are the parties and issues substantially the same?
- (B) Does the foreign action frustrate local policy, harass the prevailing party, or threaten the forum’s jurisdiction and judgments?
- (C) Do principles of comity weigh against relief?

See Quaak, 361 F.3d at 20; *Laker Airways*, 731 F.2d at 926–30, 937–39.

[¶52] Each factor supports an injunction here: **(A)** The Dutch action involves the same parties, repackages issues the North Dakota jury already resolved, and seeks to wipe out the judgment. **(B)** It frustrates North Dakota policy by harassing the prevailing party, undermining the State’s chosen refusal to

enact an anti-SLAPP statute, and threatening this Court’s jurisdiction to provide meaningful relief. And (C) comity confirms that Greenpeace should be enjoined from asking a foreign court to declare a North Dakota jury verdict “unfounded.”

A. The parties and issues are substantially the same: Determining whether this case is “manifestly unfounded” necessarily requires relitigating the merits of this case.

[¶53] Greenpeace’s Dutch action requires the parties to relitigate the merits of this North Dakota case. It makes no difference that Greenpeace styled its claim in Amsterdam as an “anti-SLAPP” action under European law. Substance, not form, controls. One of the elements of Greenpeace’s Dutch cause of action is proving that Energy Transfer’s North Dakota lawsuit is “manifestly unfounded.” That means success abroad necessarily requires a foreign court to decide—contrary to a unanimous Morton County jury—that Greenpeace wasn’t involved in unlawful conduct, didn’t cause Energy Transfer’s losses, and didn’t act with malice. The Dutch action thus poses a head-on threat to the validity and enforceability of North Dakota’s judgment.

[¶54] The district court nonetheless denied relief on the ground that cases didn’t present “the same” issues. That was error. Anti-suit injunctions aren’t limited to situations where the two proceedings involve identical causes of action. They exist to protect a court’s jurisdiction and judgments whenever a foreign proceeding threatens to nullify or undermine them. By demanding identical causes of action, the district court elevated form over substance and

invited the very abuse these injunctions are meant to prevent: a losing party can evade a judgment simply by relabeling its arguments under a new legal theory abroad.

[¶55] Courts across the country have rejected that kind of rigidity. The proper inquiry is whether the parties and issues are “substantially similar.” *Quaak*, 361 F.3d at 20. There is no requirement that the actions be “precisely and verbally identical.” *Applied Med. Distrib. Corp. v. Surgical Co. BV*, 587 F.3d 909, 915 (9th Cir. 2009); accord *Sing Fuels Pte Ltd. v. M/V Lila Shanghai*, 2023 WL 3506466, at *4 (E.D. Va. May 17, 2023). Indeed, to insist on literal identity would “invariably allo[w] competing international litigation,” because the verbal form of laws will always differ across jurisdictions. *Applied Med.*, 587 F.3d at 915–16.

[¶56] That’s exactly what Greenpeace has done. Its Dutch complaint expressly targets the North Dakota action, seeks a declaration that the case is “manifestly unfounded and abusive,” and demands damages designed to offset the \$131 million verdict against it. Greenpeace’s own statements confirm that its goal is to obtain a contrary ruling abroad and to shift liability back onto Energy Transfer. *See* (E10:4) (“There is no scenario in which Energy Transfer gets paid this ridiculous amount.”). That isn’t a legitimate parallel proceeding—it’s a collateral attack. Under any sensible standard, the overlap is more than substantial, and the district court’s contrary conclusion was error.

B. Equity requires an injunction: Greenpeace's Dutch action is vexatious, will frustrate North Dakota policy, and is otherwise inequitable.

[¶57] An anti-suit injunction is also warranted because the Dutch action is (1) vexatious and harassing, (2) undermines North Dakota's policies, and (3) threatens the State's ability to provide meaningful relief. Any one of these grounds alone would suffice; taken together, they make the case for injunctive relief overwhelming. The timing alone exposes Greenpeace's purpose: Greenpeace filed in Amsterdam on the eve of trial, after six years of litigation in this State and less than two weeks before the jury was seated.

[¶58] ***First***, the Dutch action is vexatious and harassing. The substance of Greenpeace's suit confirms that purpose. Greenpeace asks a foreign court to brand this case "manifestly unfounded" in order to undo a local jury verdict and saddle Energy Transfer with damages of its own. Far from serving any legitimate purpose, the Dutch action exists to harass the prevailing party, multiply proceedings, and impose crushing expense. That's the definition of vexatiousness.

[¶59] The district court nonetheless concluded that the Dutch action wasn't "vexatious" because it didn't literally duplicate the North Dakota claims. That was error. North Dakota law doesn't limit "vexatious" to carbon-copy relitigation. Instead, it defines vexatious conduct broadly to include actions that "serve primarily to harass or maliciously injure another party," "hinders the effective administration of justice," or "impedes the normal and essential

functioning of the judicial process.” *In re Emelia Hirsch Trust*, 2017 ND 291 ¶ 5, 904 N.W.2d 740. The Dutch action meets that standard many times over. Greenpeace’s own general counsel has confirmed that its aim is to ensure “there is no scenario in which Energy Transfer gets paid this ridiculous amount.” (E10:4).

[¶60] ***Second***, Greenpeace’s Dutch suit frustrates North Dakota policy in two independent ways. It undermines the State’s sovereign interest in providing those harmed within its borders a forum to seek redress by inviting a foreign court to sit in judgment of a North Dakota proceeding. And it attempts to subject a North Dakota lawsuit—brought under North Dakota law—to an anti-SLAPP statute, notwithstanding the North Dakota Legislature’s considered judgment not to enact such a statute. That policy choice was no accident. As commentators and courts have observed, anti-SLAPP statutes are themselves susceptible to rampant abuse: they are routinely invoked not to protect genuine petitioning activity, but to short-circuit defamation suits and insulate unlawful conduct from accountability. North Dakota—like some twenty other States—deliberately rejected that path. Greenpeace seeks to circumvent that choice by inviting a foreign court to override North Dakota law and apply an expansive foreign anti-SLAPP regime to this case.

[¶61] ***Third***, allowing the Dutch suit to proceed would be inequitable. The burdens the Dutch action imposes are overwhelming. Energy Transfer has already litigated for six years, endured a three-week trial, and prevailed before

a jury. Forcing it to defend a retaliatory action in a foreign forum—under foreign law, in a foreign language, and at enormous cost—would impose precisely the kind of “unwarranted inconvenience, expense, and vexation” anti-suit injunctions are designed to prevent. *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 627 (5th Cir. 1996). It also creates an intolerable risk of inconsistent rulings: a North Dakota jury has already found Greenpeace liable for conspiracy, defamation, and tortious interference, yet Greenpeace is asking a Dutch court to declare the case meritless. That’s a recipe for irreconcilable judgments and a practical nullification of the North Dakota verdict. *See, e.g., Lee*, 234 A.D.3d at 491–92.

[¶62] When a foreign action threatens to undo a North Dakota judgment, create inconsistent rulings, and impose crushing burdens on a prevailing party, an anti-suit injunction isn’t just appropriate—it’s essential.

C. Comity confirms an anti-suit injunction is necessary here.

[¶63] The inequities aren’t cured by appeals to comity. The district court erred in concluding that comity was irrelevant and that it weighed against injunctive relief in all events.

[¶64] Comity plainly applies here, and it confirms an injunction is required. Both cases present the same core issue—whether Energy Transfer’s claims are “meritless.”

[¶65] As this Court has explained, comity favors protecting the first-filed action (Energy Transfer’s North Dakota suit). In *Stenehjem*, the Court said

that comity is “a principle under which a court voluntarily defers action on a matter properly within its jurisdiction until a court in another jurisdiction, with concurrent jurisdiction and *who is already cognizant of the litigation*, has an opportunity to pass upon the matter.” *State ex rel. Stenehjem v. Simple.net, Inc.*, 2009 ND 80 ¶ 14, 765 N.W.2d 506 (emphasis added).

[¶66] Energy Transfer filed this North Dakota suit six years ago (in 2019). The case proceeded through discovery and all pre-trial motions practice. It was tried to a jury for over three weeks, and the unanimous jury has already rendered its verdict. The Dutch action by contrast was filed seven *months* ago—and less than two weeks before trial began in Morton County. Comity therefore counsels that North Dakota’s judgment should control, not that a later-filed foreign collateral attack should dictate the result. *See, e.g., Bidas*, 16 S.W.3d at 893 (upholding injunction where foreign suit threatened first-filed domestic action).

[¶67] Reciprocity underscores the point. Comity presumes mutual respect between jurisdictions. *Laker Airways*, 731 F.2d at 937. Yet the very EU anti-SLAPP directive Greenpeace invokes instructs member-state courts not to recognize or enforce judgments from “third countries” deemed “manifestly unfounded or abusive.” (E1:31¶133; E9:3¶17). A framework that directs foreign courts to disregard North Dakota judgments can’t demand this Court’s deference in the name of comity.

[¶68] While courts “vary as to the degree of prejudice to public policy” “which [they will] tolerate[] before comity will not be followed,” comity under “any definition” yields when the foreign action “is specifically intended to interfere with” the domestic suit—a stratagem that gravely threatens the domestic forum’s jurisdiction and “strong public policies.” *Laker Airways*, 731 F.2d at 937–38.

[¶69] That’s precisely the case with Greenpeace’s foreign gambit. The Dutch action seeks to brand a North Dakota lawsuit “manifestly unfounded,” relitigate issues a jury has already resolved, and impose damages to offset the verdict. Allowing it to proceed would undermine the sovereignty of this State and the integrity of its judicial system—interests that far outweigh any abstract concern for comity.

* * *

[¶70] This Court’s supervisory power exists for precisely these circumstances—to prevent a foreign litigant from undermining North Dakota’s judicial process by asking a foreign tribunal to sit in judgment of this case and declare it “manifestly unfounded.” Greenpeace’s Dutch action isn’t a legitimate parallel proceeding; it’s a collateral attack designed to nullify a unanimous jury verdict, relitigate issues already tried, and saddle the prevailing party with duplicative, harassing litigation overseas. Left unchecked, it’ll produce inconsistent rulings, threaten the enforceability of a North Dakota judgment, and erode confidence in this State’s courts.

[¶71] An anti-suit injunction isn't just appropriate—it's necessary to preserve the integrity of North Dakota's judicial system and ensure that its verdicts remain final and binding within its borders.

CONCLUSION

[¶72] This Court should grant the petition and issue a supervisory writ directing the district court to enjoin Greenpeace from pursuing its Netherlands action.

Dated: September 25, 2025

Respectfully submitted,

FREDRIKSON & BYRON, P.A

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ENERGY TRANSFER OPERATING, L.P., AND DAKOTA ACCESS, LLC

CERTIFICATE OF COMPLIANCE

[¶73] I, Lawrence Bender, one of the attorneys of the law firm of Fredrikson & Byron, P.A., certify that this petition complies with the page limitation in North Dakota Rule of Appellate Procedure 32, as it's a total of 33 pages (including the cover and this final page).

/s/ Lawrence Bender
Lawrence Bender, ND Bar #03908

CERTIFICATE OF SERVICE

[¶74] I, Lawrence Bender, one of the attorneys of the law firm of Fredrikson & Byron, P.A., certify that on September 25, 2025, true and correct copies of this petition (with exhibits 1 through 10) were served on following persons by e-mail:

Court Clerk for the District Court of North Dakota	<i>08clerk@ndcourts.gov</i>
Court Clerk for the District Court of North Dakota, County of Morton	<i>smichaelson@ndcourts.gov</i>
Court Recorder for Judge Gion, for the District Court of North Dakota, County of Morton	<i>tculver@ndcourts.gov</i>
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/s/ Lawrence Bender
Lawrence Bender, ND Bar #03908

EXHIBIT 1

Exhibit A

(English translation provided for convenience only - the Dutch text is authoritative)

SUMMONS

Today, the _____ two thousand and twenty-five,

at the request of:

the **STICHTING GREENPEACE COUNCIL**, having its registered office in (1058 GV) Amsterdam at Surinameplein 118, which for this case elects domicile at the office address of Mr. E.W. Jurjens, practicing at Prakken d'Oliveira Human Rights Lawyers at Linnaeusstraat 2-A in Amsterdam (1092 CK), who is appointed attorney in this case,

I have summoned:

1. The foreign law corporation **Energy Transfer LP**, incorporated in the State of Delaware and having its office at 8111 Westchester Drive, Dallas, Texas 75225 UNITED STATES OF AMERICA; for the purpose of service, domiciled at its Registered Agent **Corporation Service Company**, located at 251 Little Falls Drive, Wilmington, Delaware 19808, United States;

therefore serving my writ on the office of the Public Prosecutor of the District Court of Amsterdam and leaving two copies of this writ as well as a translation into English with:

working there;

copy of the same also being sent to the summoned party by Fedex;

as well as by e-mail to the e-mail addresses Media@energytransfer.com and InvestorRelations@energytransfer.com;

it is requested to serve the writ in accordance with Articles 3 to 6 of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of November 15, 1965, by simple delivery or, if this is not possible, by service and notice in

accordance with the forms prescribed by the laws of the United States of America (Delaware) for the service and notification of documents, in either case with delivery of a proof of receipt;

2. The foreign law corporation **Energy Transfer Operating, L.P.**, incorporated in the State of Delaware of the United States and having its office at 8111 Westchester Drive, Suite 600, Dallas, Texas 75225, United States, for the purpose of service domiciled at its "Registered Agent" **Corporation Service Company**, located at 251 Little Falls Drive, Wilmington, Delaware 19808, United States;

therefore serving my writ on the office of the Public Prosecutor of the District Court of Amsterdam and leaving two copies of this writ as well as a translation into English with:

working there;

copy of the same also being sent to the summoned party by Fedex;

as well as by e-mail to the e-mail addresses Media@energytransfer.com and InvestorRelations@energytransfer.com;

it is requested to serve the writ in accordance with Articles 3 to 6 of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of November 15, 1965, by simple delivery or, if this is not possible, by service and notice in accordance with the forms prescribed by the laws of the United States of America (Delaware) for the service and notification of documents, in either case with delivery of a proof of receipt;

3. The foreign law corporation **Dakota Access LLC**, located in the State of Delaware of the United States and having its office at 1300 Main Street Houston, Texas 77002-6803, United States, for the purpose of service domiciled at its "Registered Agent" **Corporation Service Company**, located at 251 Little Falls Drive, Wilmington, Delaware 19808, United States

therefore serving my writ on the office of the Public Prosecutor of the District Court of Amsterdam and leaving two copies of this writ as well as a translation into English with:

working there;

copy of the same also being sent to the summoned party by Fedex;

as well as by e-mail to the e-mail addresses Media@energytransfer.com, InvestorRelations@energytransfer.com and [REDACTED]

it is requested to serve the writ in accordance with Articles 3 to 6 of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of November 15, 1965, by simple delivery or, if this is not possible, by service and notice in accordance with the forms prescribed by the laws of the United States of America (Delaware) for the service and notification of documents, in either case with delivery of a proof of receipt;

to appear on **Wednesday, July 2, 2025 at 10:00 a.m.**, not in person but represented by an attorney, at the hearing of the District Court of Amsterdam, at Parnassusweg 280 in (1076 AV) Amsterdam, Netherlands;

WITH NOTICE THAT:

- a. if a defendant fails to designate an attorney or fails to pay the court fee hereinafter specified in due time, and the prescribed time limits and formalities have been observed, the court shall grant default against such defendant and award the claim hereinafter described, unless it appears to the court to be unlawful or unfounded;
- b. if at least one of the defendants appears in the proceedings and has paid the court fee in a timely manner, a single judgment will be rendered between all parties, which will be considered an adversary judgment;
- c. on appearing in the proceedings, a court fee will be charged to each of the defendants, payable within four weeks from the time of appearance;
- d. the amount of court fees is listed in the most recent appendix belonging to the Court Fees (Civil Cases) Act (*Wet griffierechten burgerlijke zaken*), which can be found on the website: www.kbvg.nl/griffierechtentabel, among others;
- e. an impecunious defendant is charged a court fee for impecunious persons established by or in accordance with the law, if at the time the court fee is charged he has submitted:
 - 1. a copy of the legal aid award, as referred to in Article 29 of the Legal Aid Act (*Wet op de Rechtsbijstand*), or if this is not possible due to circumstances not reasonably attributable to it, a copy of the application, as referred to in Article 24(2) of the Legal Aid Act, or

2. a statement from the board of the Legal Aid Council, referred to in Article 7, third paragraph, subsection e, of the Legal Aid Act, showing that its income does not exceed the incomes referred to in the governmental decree under Article 35(2) of that Act;
- f. a joint court fee is levied only once on defendants who appear through the same lawyer and make identical submissions or present identical defenses, based on Article 15 of the Court Fees (Civil Cases) Act;
- g. the plaintiff and defendants are required under Article 21 of the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*) to fully and truthfully plead the facts relevant to the court's decision;
- h. based on Article 149 of the Code of Civil Procedure, the court must consider as established facts or rights asserted by a party and not challenged or not sufficiently challenged by the other party or parties, subject to the court's power to require evidence, whenever acceptance of the assertions would lead to a legal effect that is not at the discretion of the parties;
- in order to, at the aforesaid hearing, hear claims and conclusions being presented in accordance with the following:

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1 INTRODUCTION

1. In November 2016, the Stichting Greenpeace Council (also known as Greenpeace International, hereinafter "**GPI**"), along with more than 500 other organizations, signed an open letter by the reputed Dutch NGO, BankTrack. The letter called on financiers of a highly controversial oil pipeline, which at the time was under construction in North Dakota, United States, to put on hold their financial support for this project until the serious concerns of the Standing Rock Sioux Tribe about the project were resolved to their full satisfaction.
2. Supporting this call was a legitimate and perfectly ordinary act of public participation, in the context of a debate of public interest. Everyone is entitled to have an opinion on such issues and to express them publicly. That is the essence of healthy and pluralistic public debate, which is an essential pillar of a well-functioning and free democratic society.
3. The co-signing of BankTrack's open letter is the sole evidence on the basis of which the defendants (collectively, "**Energy Transfer**") have twice dragged GPI before U.S. courts.¹ These successive, extremely costly proceedings have now dragged on for more than seven

¹ Along with several other defendants, who are equally blameless.

years. Defendants are demanding payment of at least \$300 million in damages. In addition they demand legal fees, which are also expected to reach tens of millions of dollars.

4. For people unfamiliar with these cases, this may sound like the synopsis of a bad and overly dramatic Netflix series. The reaction GPI often hears when it speaks out about these cases is: surely this can't be true, isn't there more to it? Surely a company would not spend years and millions of dollars pursuing GPI for allegedly "participating in a criminal organization," having an "extremist agenda," conducting a "campaign of misinformation," "defrauding donors," and "violent attacks against Energy Transfer employees"² - just because of co-signing one letter? Isn't freedom of expression considered almost sacred in the United States?
5. GPI naturally understands this initial reaction: it is also a bizarre situation and the claims are completely unfounded. But the case does not stand alone. Not even nearly.
6. Indeed, Energy Transfer is using a tried and true recipe here. The use of legal power play by powerful and wealthy parties against public watchdogs, such as the media and NGOs, to silence them, exhaust them financially, and thus create a "chilling effect" has been commonplace for many years, and it is a problem that GPI has also been confronted with on numerous occasions. In the last century, American academics who studied this phenomenon coined the term "Strategic Lawsuits Against Public Participation" to describe it.³ The apt acronym is: "**SLAPP**."
7. In a 1989 paper, Prof. George W. Pring, who coined the term with Prof. Penelope Canan, concluded that SLAPPs in the United States were "frighteningly common" and that "there is no dearth of victims: in the last two decades, thousands of citizens have been sued into silence." The smallest act of public participation can give rise to costly and lengthy litigation: Prof. Pring cites examples including "circulating a petition," "support[ing] a public interest, law-reform lawsuit" and "speak[ing] up at a school board meeting about a bad teacher or unsafe brakes on school buses." He noted that the purpose of a SLAPP is different from a regular lawsuit:

"The apparent goal of SLAPPs is to stop citizens from exercising their political rights or to punish them for having done so. SLAPPs send a clear message: that there is a "price" for speaking out politically. The price is a multimillion-dollar lawsuit and the expenses, lost resources, and emotional stress such litigation brings. This is a message with import for every American, activist or not. As these suits become an increasing (and increasingly known) risk for the ordinary citizen who decides to speak out on a public issue, SLAPPs raise substantial concern for the future of citizen involvement or public participation in government, a fundamental precept of representative democracy in America."
8. Prof. Pring puts it aptly. "There is a price for speaking out." Kelcy Warren, co-founder and major shareholder of Energy Transfer, has said in the media about the lawsuits against GPI:

"Everybody's afraid of these environmental groups and the fear that it may look wrong if you fight back (...) but what they did to us is wrong, and they're going to pay for it [...] They're going to pay for this, they're going to pay for this."

² This is only a limited anthology of the serious allegations Energy Transfer has made against GPI in lawsuits and public utterances in recent years.

³ Among others by Prof. George W. Pring, see: George W. Pring, SLAPPs: Strategic Lawsuits against Public Participation, 7 Pace Env'tl. L. Rev. 3 (1989). DOI: <https://doi.org/10.58948/0738-6206.1535>. The citations in the rest of this introduction are also taken from this paper.

9. The price GPI has been paying for co-signing a letter in 2016 is being drawn into unsubstantiated, protracted and extremely costly litigation by Energy Transfer for over seven years and counting. In large parts of the United States and in Europe, there is a broad consensus among lawmakers that no party should pay such a price for legitimate and ordinary participation in the public debate. They correctly signal - as does Prof. Pring in the above quote - that SLAPPs pose a serious threat to a democracy.
 10. Therefore, many states in the U.S. have had legal protection in place against SLAPPs for years (though not in the state where GPI was sued by Energy Transfer). In Europe, too, laws and regulations have been passed in recent years to protect the media, NGOs and other 'public watchdogs' from SLAPPs. An element of these laws and regulations is that it should be possible in any EU Member State to ask the national courts for protection against SLAPPs brought outside the EU against a public watchdog based in that Member State.⁴ The Dutch government confirmed late last year that these forms of protection against SLAPPs are already possible under applicable Dutch law.
 11. In the present case, GPI, to its knowledge for the first time in the EU, is asking the court in its country of domicile to protect it from these SLAPPs in a third country (i.e., the U.S.). In this case, GPI seeks, *inter alia*, a declaratory judgment, compensation for costs and damages suffered as a result of the SLAPPs brought against it, and publication of the judgment to be rendered in this case (see Explanation of the demands, para. 8) on the factual (para. 2-3) and legal (para. 4-7) bases to be discussed below.
 12. As this summons will show, the importance of this case to GPI is enormous. In addition, this case will also send an important signal. EU-based media, NGOs and other public watchdogs are deeply affected by SLAPPs inside and outside the EU (another example is the UK). It is the clear intention of European and Dutch legislators to offer far-reaching protection to targets of SLAPPs. For the realization of this practical and effective protection, national judges play a crucial role. For this reason, too, GPI requests your Court to grant the claims brought in this case.
 13. The exhibits mentioned in this summons have been served together with the summons and will be brought into the proceedings together with the summons on the first court date.
- 1.1 Plaintiff**
14. The plaintiff in this case, Stichting Greenpeace Council, also operating under the name Greenpeace International ("GPI") is an Amsterdam-based foundation with Public Benefit Organization (ANBI) status. GPI's statutory objective is promoting the conservation of nature (Article 3 of GPI's Articles of Association, **Exhibit 1**). An extract of GPI's entry in the Business Register is submitted as **Exhibit 2**.
 15. GPI coordinates the Greenpeace network, which in addition to GPI consists of 25 independent national and regional organizations ("NROs"). These NROs are independent legal entities and have their own boards, which are independent of GPI. The network uses peaceful, creative confrontation to expose global environmental problems, and develop solutions for a green and peaceful future. GPI facilitates the development of a long-term strategic campaign program for the Greenpeace network (called the "Framework"). Based on this campaign program, the NROs independently develop and implement projects in their territories. In addition, GPI is the holder of Greenpeace's registered trademarks, and licenses

⁴ Article 17(1) Directive (EU) 2024/1069 of the European Parliament and of the Council of April 11, 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation')

the NROs to use (among other things) the GREENPEACE mark.⁵ Greenpeace's core values include nonviolence and independence. Greenpeace organizations do not accept donations from governments and businesses.

1.2 Defendants

16. Defendant 1, Energy Transfer, L.P. is a corporation under foreign law, namely, the law of the State of Delaware (United States). Defendant 2, Energy Transfer Operating, L.P. is also a corporation under foreign law, namely the law of the State of Delaware. Previously, they operated under the trade names Energy Transfer Equity, L.P. (Defendant 1) and Energy Transfer Partners, L.P. (Defendant 2), respectively.⁶ Defendant 3, Dakota Access, LLC, is also a corporation under foreign law, namely the law of the State of Delaware. Although all of the Defendants (also) have offices in Dallas, Texas, they are incorporated in the State of Delaware, as follows from respective extracts of their registrations in the official records of the Division of Corporations of the State of Delaware (**Exhibit 3**). Of particular note here is that, as follows from the register of this Division which can be accessed online, Defendants all use what is known as a "Registered Agent" (**Exhibit 4**), namely the Corporation Service Company. Upon clicking on the term "Registered Agent" in this online register, the following explanation of this term appears (**Exhibit 5**):

"Every corporation shall have and maintain in this State a registered agent in each case, having a business office which generally is open during normal business hours to accept service of process and otherwise perform the functions of a registered agent. Such agent may be an individual or business entity authorized to transact business in the State of Delaware. The data presented in this field denotes the agent name, address and phone number of such agent for the entity you are viewing."

17. The Registered Agent is thus, GPI understands, an agent authorized on behalf of another party to accept documents for service on that party. Therefore, GPI has served this summons and the attached exhibits (also) on this Registered Agent, namely the Corporation Service Company.
18. Defendants all belong to the same corporate group. Defendant 1 is the parent company of Defendant 2. Defendant 2 in turn is a majority shareholder in Defendant 3. Defendants will hereinafter be collectively referred to as "**Energy Transfer**."
19. Energy Transfer's core business is the transportation and storage (temporary or otherwise) of fuels such as gas and oil.⁷ Energy Transfer owns (or claims) the largest network of pipelines to transport these fuels in the United States.

⁵ See also: <https://www.greenpeace.org/international/about/structure/>.

⁶ In this regard, see Energy Transfer press release dated Oct. 19, 2018, "Energy Transfer Equity, L.P. and Energy Transfer Partners, L.P. Complete Merger, Simplify Structure," at: <https://ir.energytransfer.com/news-releases/news-release-details/energy-transfer-equity-lp-and-energy-transfer-partners-lp>: "Energy Transfer Equity, L.P. ("ETE") and Energy Transfer Partners, L.P. ("ETP") today announced the completion of their previously announced merger of ETE with ETP. (...) As part of the merger, ETE changed its name to "Energy Transfer LP" and its common units will begin trading on the New York Stock Exchange ("NYSE") under the "ET" ticker symbol at the opening of the market today. In addition, ETP changed its name to "Energy Transfer Operating, L.P."

⁷ See: <https://www.energytransfer.com/about/>

2 **FACTS: BACKGROUND**

2.1 **The controversy surrounding the Dakota Access Pipeline (DAPL)**

20. In 2014, Energy Transfer began preparations for the construction of a nearly 2,000-kilometer underground oil pipeline running from North Dakota to Illinois. This highly controversial pipeline has come to be known as the "Dakota Access Pipeline" (hereafter "**DAPL**").
21. In the original plans, DAPL was to pass under the Missouri River upstream of Bismarck (North Dakota's capital city). However, when relevant authorities became aware of the planned route, they expressed concerns that an oil spill at that location would jeopardize the water supply for Bismarck.⁸ The proposed route was then shifted south, downstream of Bismarck. This can be clearly seen on the map by Vox Media submitted as **Exhibit 6**.
22. However, the alternative route for DAPL also proved highly controversial. Energy Transfer rerouted the pipeline through land which is "unceded Indian territory" according to 19th century treaties. The proposal called for a crossing of the Missouri River one half mile upstream from the Standing Rock Sioux Tribe's current reservation, below Lake Oahe, a reservoir in the river.
23. For an understanding of why the proposed route for DAPL led to so much concern among Indigenous Peoples in the area, it is helpful to provide an outline of their history with the U.S. government. GPI claims no expertise on the subject; the following is an attempt to succinctly summarize the facts as they emerge from a court filing by the Standing Rock Sioux Tribe.
24. The Standing Rock Sioux Tribe is part of a larger Native Nation, the Oceti Sakowin Oyate (Lakota for "Seven Council Fires"), or, in English, the Great Sioux Nation. The Tribe's ancestors entered into two major treaties with the United States in the 19th century. In the 1851 Fort Laramie Treaty, the United States recognized a large area south of the Heart River as Sioux Country. Beginning in 1864, however, gold prospectors passing through caused increasing disturbance in important buffalo hunting grounds. The resulting conflict was settled in 1868 with a new Fort Laramie Treaty. This treaty established the Great Sioux Reservation. Areas that were designated as Sioux territory in the 1851 treaty, but now fell outside the Great Sioux Reservation, were designated as "unceded Indian territory" in Article XVI of the treaty.⁹ See in this connection the map submitted as Exhibit 6 where a relevant part of this area is marked.
25. The peace was not to last long. In 1874, American soldiers found gold during an expedition to the sacred Black Hills, within the Great Sioux Reservation. The Sioux refused to sell the hills to the federal government, after which war broke out again. The Cheyenne and Sioux (led, among others, by the famed Sitting Bull) inflicted a crushing defeat on government troops at the Battle of the Little Bighorn. Eventually, the United States succeeded in imposing its will. The U.S. Congress passed an act in 1877 that removed the Black Hills from the Great Sioux Reservation. Then, in 1889, Congress established new boundaries for a number of smaller reservations, including the Standing Rock Sioux Reservation.¹⁰ The Great Sioux Nation never recognized these unilateral, treaty-breaking acts. The U.S. Supreme Court ruled in 1980 that "A more ripe and rank case of dishonorable dealings will never, in all probability, be found in our nation's history" and awarded compensation for what it designated as a taking of the

⁸ New Yorker, Sept. 6, 2016, "A Pipeline Fight and America's Dark Past,"

<https://www.newyorker.com/news/daily-comment/a-pipeline-fight-and-americas-dark-past>.

⁹ Standing Rock Sioux Tribe v. U.S. Army Corps Engineers and Others, Complaint of Oct. 14, 2024, paras. 23-25.

¹⁰ Standing Rock Sioux Tribe v. U.S. Army Corps Engineers and Others, Complaint of Oct. 14, 2024, para. 26.

Black Hills.¹¹ The Sioux never collected this compensation because they do not recognize the legal validity of the taking.

26. Later, for the construction of Lake Oahe in the 1960s, large portions of the Standing Rock Sioux Reservation and the Cheyenne River Reservation were flooded by the authorities and the inhabitants of the area were forced to leave. For more background on this, see **Exhibit 7**, a 2016 federal complaint by the Standing Rock Sioux Tribe against the US Army Corps of Engineers.
27. Given this history, it is obvious that construction of DAPL on land that the Sioux regard as "unceded Indian territory" is contentious. Moreover, the Standing Rock and Cheyenne River Sioux Tribes rely on the waters of Lake Oahe in many ways, including for drinking water, agricultural purposes, industry, and sacred religious and medicinal practices. Both Tribes consider the waters to be sacred and central to their practice of religion. Thus, as in Bismarck, significant concerns arose about the impact of the pipeline on the Tribe's water ahead of the construction of DAPL. There were also concerns that construction of DAPL could result in damage to ancient burial grounds or other sites of cultural or historical importance to the Tribe.
28. In March 2016, Energy Transfer already began construction of DAPL, even though it did not yet have the necessary permits and easements to do so. In April 2016, tribal members set up prayer encampments near Cannonball, North Dakota, as a focal point for opposition against DAPL. Soon the opposition found resonance and the demonstrations steadily grew after April 2016.
29. The governing authority, the US Army Corps of Engineers (USACE), granted Energy Transfer a permit to construct DAPL under Lake Oahe on July 25, 2016, despite Tribal concerns. This was perceived by the Water Protectors and allies as a stark contrast to the situation around Bismarck, where identical concerns about the water supply had led the authorities to reroute DAPL, as discussed. On July 27, 2016, the Standing Rock Sioux Tribe filed a lawsuit against the USACE for issuing the permit (see Exhibit 7, the "federal complaint"). Significantly, in addition to a permit, an easement was required to drill under the river: this had not yet been granted by the USACE at that time.
30. Meanwhile, the prayer camps continued and grew larger as construction of DAPL progressed. In mid-August 2016, the Standing Rock Sioux Tribe's Tribal Council put out a public call for support to the Indigenous communities of the United States. More than 300 Indigenous Tribes and thousands of non-Indigenous supporters joined the resistance. Around this time, Dakota Access, LLC sued the Tribe's chairman Dave Archambault, another member of the Tribal council, and a number of individuals, alleging trespass and interference with its construction activities. The federal court promptly dismissed the case, stating, "Dakota Access' assertions that the Defendants proximately caused it losses of over \$75,000 are the kind of 'naked assertion[s] devoid of further factual enhancement,' which are insufficient to form the basis of a complaint."¹²
31. The demonstrations were largely peaceful, but during the period August-November 2016, there were several confrontations between the protesters on the one hand, and law

¹¹ United States v. Sioux Nation of Indians, 448 U.S. 371 (1980).

¹² Order dated May 18, 2017, following defendants' motions to dismiss, available at: <https://waterprotectorlegal-org.nyc3.cdn.digitaloceanspaces.com/production/app/uploads/2017/05/2017.05.18-Order.pdf>.

enforcement and the private security company TigerSwan hired by Energy Transfer to guard the work around the DAPL project, on the other.¹³

32. As part of the its lawsuit against the Army Corps of Engineers, on Sept. 2, 2016, the Standing Rock Sioux Tribe filed a sworn declaration in court by Tim Mentz Sr., a member of the Tribe and operator of a business in North Dakota that identifies for many infrastructure projects the location of historical cultural artifacts of the Indigenous tribes in the area. The declaration included detailed information about burial grounds and resources of cultural significance located in and along DAPL's path (including GPS data). Part of the questions raised by the litigation brought by the Standing Rock Sioux Tribe was whether Energy Transfer had the right to construct DAPL through these sites. So there was an ongoing debate about that in the proceedings between the parties, with the Tribe's perspective being that the proposed route of DAPL crossed places of historical and cultural importance.
33. Within 24 hours of the filing of this declaration - on a Saturday - Energy Transfer had bulldozers grade the area in which these sites were located. Hundreds of Indigenous protesters tried to prevent this but were met with attack dogs and pepper spray.¹⁴ This aggressive conduct of the private security company hired by Energy Transfer attracted much controversy and (inter)national media attention, which also increased the size of the demonstrations (**Exhibit 8** - article in The Guardian from November 2016 about the demonstrations).
34. In early December 2016, the USACE announced it was refusing to grant the necessary easement to Energy Transfer. Therefore, construction of DAPL could not proceed. However, after Donald Trump took office in 2017, he issued an Executive Order instructing the USACE to after all provide the required easement. The USACE did just that. The construction of DAPL was then completed, and the pipeline became operational in June 2017. Incidentally, Trump signed this Executive Order just four days after his inauguration. Kelcy Warren, co-founder and major shareholder of Energy Transfer, donated USD 250,000 for the inauguration, having already donated USD 100,000 to Trump's joint fundraising operation, Trump Victory.¹⁵
35. However, litigation over DAPL continues to this day, and there is a possibility that the outcome will be that DAPL will after all need to be rerouted. In 2020, a federal judge ruled in the case brought by the Standing Rock Sioux Tribe that the Army Corps of Engineers should have prepared an Environmental Impact Statement (EIS); vacated the easement granted for construction under the Missouri River, and ordered the pipeline shut down. This decision was affirmed on appeal, except that the Court of Appeals reversed the order for the pipeline to cease operations. The EIS proceeding is still ongoing. Meanwhile, the Tribe has again gone to court and is seeking the shutdown of the pipeline. In its suit, the Tribe cites, among other things, the lack of the required easement, the intentional destruction of burial sites, and the fact that Energy Transfer is currently debarred from federal contracts due to "a lack of

¹³ In doing so, the TigerSwan company employed military tactics and attempted to infiltrate the protesters, as it later turned out. In this context, see ACLU June 2, 2017, "Why Did a Private Security Contractor Treat Standing Rock Protesters Like 'Jihadists'?", <https://www.aclu.org/news/free-speech/why-did-private-security-contractor-treat-standing-rock>.

¹⁴ Indian Country / Today MediaNetwork.com September 4, 2016, "Manning: 'And Then the Dogs Came': Dakota Access Gets Violent, Destroys Graves, Sacred Sites," archived via the Internet Archive WayBack Machine: <https://web.archive.org/web/20161213104458/http://indiancountrytodaymedianetwork.com/2016/09/04/manning-and-then-dogs-came-dakota-access-gets-violent-destroys-graves-sacred-sites-165677>.

¹⁵ E&E News May 9, 2024, 'Billionaire Kelcy Warren invests in pipelines - and Trump', <https://www.eenews.net/articles/billionaire-kelcy-warren-invests-in-pipelines-and-trump/>.

business honesty or integrity,"¹⁶ following criminal convictions after serious environmental incidents during the construction of another pipeline.

3 FACTS: ROLE OF GPI AND LAWSUITS ENERGY TRANSFER V. GPI

3.1 The signing of the BankTrack open letter by GPI and the role of Greenpeace, Inc.

36. The demonstrations against DAPL attracted worldwide attention and were supported in various ways by a variety of organizations. On November 30, 2016, the Dutch NGO BankTrack supported the opposition to the construction by publishing an open letter addressed to the financiers of DAPL, a consortium of financial institutions led by Citibank. This letter is presented as **Exhibit 9**.
37. The letter presents the situation surrounding DAPL outlined above, and on that basis demands that the financial institutions suspend loan disbursements until construction work on the pipeline has been put on hold and all outstanding issues have been resolved to the full satisfaction of the Standing Rock Sioux Tribe. The letter was co-signed by more than 500 organizations from more than 50 countries. A random sample: they include organizations such as the Center for International Environmental Law (US), Friends of the Earth International (worldwide), the Norwegian Saami Association (Norway), Re:common (Italy), Urgenda (Netherlands) and several organizations from the Greenpeace network, including GPI (see Exhibit 9, p. 9)
38. Signing BankTrack's open letter was the entirety of GPI's involvement with the opposition to DAPL. One of the two U.S. Greenpeace entities, Greenpeace, Inc. ("**GP Inc.**"), provided limited support as requested by the Indigenous Tribes.
39. Specifically, this support consisted of a US\$15,892 donation to enable five Indigenous trainers from the organization Indigenous Peoples Power Project ("**IP3**") to spend two weeks training protesters in the history and principles of Non-Violent Direct Action. One of these trainers was also an employee of GP Inc. The IP3 trainings followed principles developed by IP3 and the Standing Rock Sioux Tribal Council. Participants were required to acknowledge "Direct Action Principles" which were displayed on a large sign. Peacefulness, prayer and nonviolence were chief among these, as well as rejection of property damage as something that "does not get us closer to our goal."
40. In addition, GP Inc. provided supplies to the encampments, partly gathered through a donation drive. These mainly consisted of camping equipment, food, clothing, paint, a vehicle with solar panels for electricity and Internet access, a first aid kit, and a number of passive restraint devices known as "lockboxes" - plastic tubes with metal pins, though there is no evidence they were used or caused any harm. A total of six GP Inc. staff members travelled to the site (out of an estimated 100,000 attendees), helping with tasks such as setting up tents, winterizing the camp. The first arrived on Sept. 5, 2016, five months after the protests began, and there were never more than three GP Inc. staff members on site concurrently. The last one left in late December. GPI was not involved in these activities at all and was not even aware of them until late October 2016. GPI also did not provide financial support for the demonstrations.

¹⁶ See "Exclusion: Energy Transfer L.P., U.S. General Services Administration," <https://sam.gov/exclusions-new?pirKey=478731&pirValue=1667217418431194>.

3.2 The Federal Lawsuit: 2017-2019

41. On August 22, 2017, Energy Transfer filed a suit in the Federal District Court in North Dakota against BankTrack, twenty John and Jane Does, EarthFirst!, Greenpeace Fund, Inc., GPI and GP Inc. (the "Federal Lawsuit").¹⁷ GP Inc. is the independent U.S. NRO within the Greenpeace network, which, as described above, played a limited role in the demonstrations against DAPL. Greenpeace Fund, Inc. is a separate non-profit entity that, consistently with its mission, supports certain activities of GP Inc., in particular by providing funds. Greenpeace Fund, Inc. - like GPI - had no involvement at all in the protests.
42. The Federal Lawsuit was based on the Racketeer Influenced and Corrupt Organizations Act, or RICO Act, and some North Dakota state laws. The RICO Act is a federal law that provides a basis for civil suits when a party is the target of acts committed as part of a criminal organization.
43. In a judgment dated July 25, 2018, the Federal Court dismissed the case against BankTrack after an initial review because the complaint failed to state a cognizable claim, nor grounds for the exercise of personal jurisdiction. A day later, the Court ordered Energy Transfer to clarify the grounds of its case against the defendant Greenpeace entities by filing an Amended Complaint. With respect to EarthFirst!, among other things, service requirements were found not to have been met, and the Court also dismissed the case against that party (Order of August 22, 2018).
44. Energy Transfer filed its Amended Complaint on June 8, 2018, a document which is submitted as **Exhibit 10**. It is a 77-page filing in which Energy Transfer expounds the following conspiracy theory (Exhibit 10, p. 10):

"Since no later than July 2016, Energy Transfer has been the target of a malicious and hostile campaign arising from its development, construction, and operation of DAPL (...) The campaign against Energy Transfer was conducted by an illegal Enterprise comprised of various legally distinct but associated-in-fact environmental organizations, individuals, and others who worked in concert with one another for the purpose of carrying out the pattern of racketeering activity directed at stopping DAPL and funding themselves and other enterprise members executing the predicate acts."
45. GPI, along with the other defendants, was alleged to be part of this "illegal Enterprise" and, as part of this alleged "Enterprise," was accused in the filing of, among other things, having a "history of engaging in property destruction and criminal sabotage in pursuit of its manufactured causes," spreading "false, misleading and manufactured claims about Energy Transfer and DAPL (...) for the purpose of fraudulently inducing donations to fund these activities and harm Energy Transfer", "manufactur[ing] and disseminat[ing] six categories of misinformation which were intentionally and expressly marketed to the public as 'facts', based on 'research' and 'science' (...)", disseminating 'misinformation' with the aim "to fraudulently mislead and incite members of the public to criminal trespass, violence and property destruction", using its financial resources "to directly and indirectly support these criminal activities", recruiting and financing "violent elements from out-of-state to descend on North Dakota" and publishing "knowingly and intentionally" "false and injurious statements" about Energy Transfer, which were allegedly published with "actual malice" (see Exhibit 10, p. 14-15 and from p. 69).

¹⁷ United States District Court, District of North Dakota, Case 1:17-cv-00173-BRW-CRH (*Energy Transfer v. BankTrack et al*).

46. These allegations were based on nothing and were pure fiction. As explained above, at the time the Federal Lawsuit was filed against it, GPI had done nothing more than co-signing, along with more than 500 other organizations, an open letter by BankTrack. There was and is no legitimate reason for Energy Transfer to sue GPI (or for that matter the other Greenpeace organizations).
47. Energy Transfer claimed, in the Amended Complaint, to have suffered no less than USD 300 million in damages (Exhibit 10, p. 62) as a result of GPI's alleged 'participation in a criminal enterprise' (for which there is and was thus no basis whatsoever). Moreover, Energy Transfer asserted it was entitled to treble damages (Exhibit 10, p. 62), so the RICO damages claim totaled at least USD 900 million (Exhibit 10, pp. 62 and 64). Apparently separate from this (this is not abundantly clear from the claims), Energy Transfer claimed also have suffered USD 300 million in damages as a result of alleged 'defamation' by GPI (Exhibit 10, p. 70). In addition to these amounts, Energy Transfer also claimed that its costs, including its attorney fees, were eligible for reimbursement. Attorney's fees in the United States can be sky-high compared to attorney's fees in the Netherlands, as is common knowledge.
48. Given the bizarre and baseless nature of the Federal Lawsuit, GPI, GP Inc. and Greenpeace Fund filed a Motion to Dismiss for Failure to State a Claim, requesting that the case be thrown out without further substantive hearing. By order dated February 14, 2019, the Federal Court granted this request, finding that the strict requirements for early dismissal of the case had been met. This February 14, 2019 Order is submitted as **Exhibit 11**.
49. In the Order, the judge gave short shrift to Energy Transfer's claims. At pp. 7-12, the judge briefly summarizes the complaints, "stripping away the hyperbole," and succinctly finds with respect to all of the RICO Act-based complaints that they are manifestly without merit. With the claim based on federal law failing, the federal court decided not to retain jurisdiction over the additional claims under North Dakota law. The Federal Lawsuit against GPI et al. thus came to an end.
50. Unfortunately, however, this was not the end of Energy Transfer's legal campaign against GPI.

3.3 The State Lawsuit: 2019-present

51. On Feb. 21, 2019, a week after the Federal Lawsuit was dismissed, Energy Transfer commenced a second lawsuit against GPI and others in the Morton County District Court, and thus in state court. This case will hereafter be referred to as the "**State Lawsuit**."¹⁸ The Complaint in this case dated February 21, 2019 is submitted as **Exhibit 12**. GPI is the first named defendant therein: the other defendants are GP Inc., Greenpeace Fund, Inc. and four others. BankTrack and EnergyFirst! are not defendants in the State Lawsuit.
52. Over the years, Energy Transfer has amended and reduced its claims. For example, it has withdrawn its case against one defendant, an individual employee of GP Inc., and has significantly shortened the list of allegedly defamatory statements made by the defendants in the State Lawsuit, from 82 to 9. However, Energy Transfer wrongly has not withdrawn its case against GPI. Energy Transfer's Second Amended Complaint, dated March 6, 2024, shows the current scope of the State Lawsuit. This document is submitted as **Exhibit 13**.

¹⁸ GPI notes that in the Federal Lawsuit, Dakota Access LLC was not a plaintiff, but Energy Transfer Partners, L.P. (the legal predecessor of Energy Transfer Operating, L.P.) as a majority shareholder of Dakota Access was. This is explained by the plaintiffs in the Federal Lawsuit in their First Amended Complaint, see Exhibit 10, par. 25

53. Energy Transfer (once again) makes very serious allegations in the Second Amended Complaint against the defendants, including GPI.¹⁹ A sample of the allegations (page numbers refer to Exhibit 13):
- a. GPI allegedly engaged in an "unlawful and violent scheme to cause financial harm to Energy Transfer and Dakota Access, to cause physical harm to their employees and infrastructure, and to disrupt and prevent the companies' construction of the [DAPL]" (p. 1);
 - b. GPI allegedly committed "violent attacks against Plaintiff's employees and property" and was guilty of "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" (p. 1-2);
 - c. GPI allegedly has an "extremist agenda," which it allegedly carries out "through means far outside the bounds of democratic political action, protest and peaceful, legally protected expression of dissent," and even through "militant direct action" including "trespass," "unlawful invasion," "violent and destructive attacks," "arson" and "intimidation, harassment and assault of Plaintiffs' employees" (p. 2);
 - d. GPI is said to be the evil genius behind "large-scale, intentional dissemination of misinformation and outright falsehoods regarding both Energy Transfer and Dakota Access (...)" and "a defamatory campaign to interfere with and, indeed, destroy Energy Transfer and Dakota Access's relationships with investors, financiers, and other constituents." (p. 3);
 - e. GPI's conduct, according to Energy Transfer, does not qualify as a protected contribution to public debate, but is allegedly "designed to inflict damage, cause delay, defame Energy Transfer and Dakota Access, and disrupt their operations as much as possible" (p. 5), and furthermore aims "[to raise funds] to further their anti-DAPL agenda" (p. 11);
 - f. GPI allegedly engaged in (I) trespass to land and chattel; (II) aiding and abetting trespass to land and chattel; (III) conversion; (IV) aiding and abetting conversion; (V) nuisance; (VI) aiding and abetting nuisance; (VII) defamation; (VIII) tortious interference with business relations; and (IX) civil conspiracy;
 - g. Energy Transfer still takes the position that a legal duty exists for GPI and the other Greenpeace defendants to pay it at least \$300 million in damages. Energy Transfer arrives at this astronomical amount by advancing bizarre categories of damages, such as nearly \$100 million because USACE granted the required easement later than expected. Energy Transfer has additionally indicated that it will seek a yet to be determined amount of exemplary damages. Such damages can be awarded if there is "clear and convincing evidence of oppression, fraud, or actual malice," against the defendant, and can be up to twice the amount claimed in damages - i.e. USD 600 million. In addition, Energy Transfer is demanding reimbursement of its full legal costs, which are expected to run to tens of millions of dollars, and interest on all these items.
54. These allegations are completely unfounded. GPI emphasizes again that it did nothing more than co-sign - along with more than 500 other organizations - a letter by BankTrack.

¹⁹ The same allegations are made (in large part) against the other defendant Greenpeace entities, and in part against BankTrack. BankTrack is not a party to the State Lawsuit. This further underscores the incongruity of Energy Transfer's case against GPI.

Moreover, Energy Transfer's accusations are also completely unfounded with respect to the other defendant Greenpeace entities.

55. As explained above, Energy Transfer, in its Second Amended Complaint, makes sweeping and exaggerated assertions about GPI and the other defendants. However, it then completely fails to elaborate more specifically on exactly what the respective roles of GPI, the other Greenpeace entities and unrelated third parties allegedly were in any wrongful conduct, and to demonstrate a causal connection to the alleged damages. Only on one point does Energy Transfer elaborate on its contentions, and that is on the issue of GPI's allegedly defamatory statements. Energy Transfer has significantly reduced the list of these allegedly defamatory statements over the course of the State Lawsuit as explained above, and it now includes two statements that Energy Transfer links to GPI. These are listed in the "Second Amended Appendix A - Greenpeace False Statements" (**Exhibit 14**).
56. Concretely, it concerns two sentences from BankTrack's open letter of Nov. 30, 2016, which incidentally repeat findings from a report by an expert member of the United Nations Permanent Forum on Indigenous Issues. In Energy Transfer's presentation of these statements, it is immediately noticeable that the 'Author' column states "Joint letter, signed by Banktrack; Greenpeace France; Greenpeace International; Greenpeace Netherlands; Greenpeace USA" (Exhibit 14). This open letter from BankTrack, co-signed by hundreds of other organizations, qualifies as a legitimate contribution to a debate of public interest and is without question a legitimate exercise of the right to freedom of expression of BankTrack and the co-signatories as 'public watchdogs' (see below). Moreover, it is striking that BankTrack, the lead author of the open letter, and the more than 500 co-signatories were not (also) sued by Energy Transfer in the State Lawsuit. There is nothing to suggest that GPI - which is mentioned somewhere in the middle of the pages-long alphabetically arranged list of co-signatories - ought to bear any special responsibility as a result of co-signing the open letter, which, as stated, is in any event entirely legitimate. This clearly shows Energy Transfer's intent to specifically harm GPI and the Greenpeace network by filing the State Lawsuit against it alone.
57. After years of discovery, Energy Transfer has not yet been able to provide the beginnings of evidence of GPI's involvement in the other serious and mostly criminal acts of which Energy Transfer accuses GPI, as explained above.²⁰ However, for seven years now, GPI has been forced to defend itself against manifestly unfounded, unnecessarily complex and protracted litigation by Energy Transfer, which has caused and continues to cause it great harm.
58. Moreover, with its choice to bring the State Lawsuit before this particular forum, Energy Transfer took advantage of a number of problems that have allowed it to drag out the unsubstantiated State Lawsuit for many years now.
59. First, unlike more than 30 other states in the United States, the state of North Dakota does not have anti-SLAPP legislation. This prevents GPI from invoking a powerful form of protection that would have been afforded to it in about 60% of all other jurisdictions in the U.S. North Dakota has therefore been described as "favorable terrain for these types of defamation lawsuits."²¹

²⁰ As an aside, Energy Transfer's accusations against the other defendants are also manifestly unfounded. However, that is not what the present case is about.

²¹ Texas Observer March 25, 2022, "Kelcy Warren's Defamation Suit Has Beto O'Rourke Spoiling For a Fight," <https://www.texasobserver.org/kelcy-warrens-defamation-suit-has-beto-orourke-spoiling-for-a-fight/>. By the way, this is an article that deals with a SLAPP lawsuit filed by Kelcy Warren against well-known (in America) politician Beto O'Rourke. The Texas judge rejected Warren's claims, ruling that O'Rourke's statements qualified

60. A second major problem is the North Dakota judiciary's difficulty in finding a judge to preside over the case. All ten judges in the district where the State Lawsuit was filed (the South Central Judicial District) recused themselves from hearing the case, for reasons unknowable to GPI. The North Dakota Supreme Court then reassigned the case to a judge from another North Dakota district, but this judge retired in April 2022. When reassigning the case, once again all judges in the South Central Judicial District recused themselves from hearing the case. The North Dakota Supreme Court then appointed Judge James Gion from another district (the South Western Judicial District) to hear the case. He took up the case beginning in August 2022.
61. Third, Energy Transfer filed the State Lawsuit in Morton County District Court. Morton County is a small area with only about 30,000 residents. The District Court there is a small court with limited resources to handle the case. The workload for judges in North Dakota counties is extraordinarily high. As an illustration, North Dakota's Chief Justice (Chief Justice) recently explained in his State of the Judiciary Address that "[o]ur district courts handle approximately 160,000 new filings and 20,000 reopened cases each year-180,000 cases. That is an incredible caseload for 55 district court judges and 53 clerks of court offices."²²
62. This touches on a fourth issue. The case will be heard by a jury that will consist only of Morton County residents. The construction of DAPL and the protests against it had a great impact on Morton County residents, and feelings among them about the events still run high. GPI therefore requested that the Court move the trial to a county where potential jurors were not personally affected by the protests against DAPL and the harsh response to them. However, the Court denied this request until further notice.
63. On top of these structural problems, Energy Transfer has managed to greatly draw out the case before trial by raising numerous obviously unfounded counts, to which GPI was forced to respond (see also below). The time-consuming and costly process of discovery took years, with Energy Transfer digging its heels in time and again. It even litigated all the way to the North Dakota Supreme Court in a failed attempt to get out from under disclosure of documents about its pipeline safety record, and to avoid having Kelcy Warren provide a deposition. There are more than 3,000 entries on the Court's docket, and the case has been described as the largest civil case to ever take place in North Dakota. There have been 110 depositions, and millions of pages of information exchanged in the "discovery" phase. GPI's costs have skyrocketed, and continue to increase every day.
64. After the State Lawsuit was filed, the defendant Greenpeace entities again filed a motion to dismiss to end the case early. Judge Marquart (a different judge than the judge currently assigned to the case) denied this request in a short Order. The decision reflects a general, weighty preference in the U.S. to construe cases in favor of the plaintiff when reviewing a motion to dismiss.
65. Following the latest version of Energy Transfer's claims in the Second Amended Complaint, GPI filed a so-called Motion for Summary Judgment on All Counts on April 8, 2024, after discovery was completed. Such a motion, briefly put, is a request for the court to decide the case without trial because the relevant facts are sufficiently undisputed between the parties, and application of the law to them can only lead to one result. This motion is submitted as

as "non-actionable opinions." See: Court of Appeals Texas, Austin June 9, 2023, No. 03-22-00416-CV (Warren v. Rourke), affirmed by the Supreme Court of Texas.

²² This speech was delivered by North Dakota Chief Justice Jon Jensen on Jan. 7, 2025 and can be read back here: <https://www.ndcourts.gov/news/north-dakota/supreme-court/state-of-the-judiciary/2025-state-of-the-judiciary-address>.

Exhibit 15.²³ In it, GPI asks the Morton County District Court to dismiss all of Energy Transfer's claims against it, as there is no basis for these claims. In the motion, GPI notes that the following facts have been established in the proceedings and are not in dispute:

- a. GPI, GP Inc. and Greenpeace Fund, Inc. are separate entities. Thus, a separate allegation would have to be made against GPI;
 - b. GPI was not involved in on-the-ground activities during the protests against DAPL in North Dakota;
 - c. GPI's only activity in the context of the protests against DAPL was co-signing BankTrack's open letter;
 - d. Energy Transfer, despite the years-long discovery process, has been unable to produce any evidence of a causal link between the (alleged) damages it suffered and any actions of GPI.
66. GPI's motion then specifically elaborates, with respect to each alleged tort (trespass, conversion, nuisance and so on), how even the basic requirements for Energy Transfer to allege and prove these counts have not been met (Exhibit 15, pp. 8-19). GPI also shows that the high threshold applicable to the award of "exemplary damages" claimed by Energy Transfer has not been met, which requires "clear and convincing evidence of oppression, fraud or actual malice" - however, there is no scintilla of evidence of such acts by GPI (p. 19-21). GPI therefore seeks dismissal of all claims against it by summary judgment.
67. The Court has yet to decide this motion ten months after it was filed, and it is not clear to GPI whether it will do so at all (in any case, there is no known date for it). Meanwhile, despite the complete lack of a basis for its case against GPI, Energy Transfer is pressing ahead with the State Lawsuit against GPI. The jury trial in the State Lawsuit is expected to begin on or about Feb. 24, 2025, leading to further harm to GPI.

3.4 Statements by Energy Transfer on GPI and the Lawsuits

68. A GP Inc. publication about the case aptly described Energy Transfer's rationale for pursuing the State Lawsuit, even after the Federal Lawsuit fell at the first hurdle, as follows:²⁴
- "When it comes to SLAPP suits like this one, the process itself is the punishment. The burden of time and money to defend constitutionally protected activities from such mischaracterizations is far too high for ordinary citizens and community organizations. As a result, many will decide to keep quiet rather than risk a ruinous judgment."
69. Energy Transfer's public statements confirm that its goal with the lawsuits against GPI and the other defendants is to silence them, as will be explained below. In addition to bringing the Federal Lawsuit and the State Lawsuit against GPI, Energy Transfer has carried on a broad media strategy. It regularly communicates about the case and its previous statements in this regard are still available and findable online for everyone.
70. Concurrently with the filing of the Federal Lawsuit, Energy Transfer published an article about GPI and the other defendants entitled "Energy Transfer Files Federal Lawsuit Against Greenpeace International, Greenpeace Inc., Greenpeace Fund, Inc., BankTrack And Earth

²³ Some parts of this submission have been redacted due to peculiarities of U.S. procedural law. This does not diminish the significance of the remaining portions of the piece.

²⁴ Greenpeace Inc. June 6, 2024, "The Story of Energy Transfer's \$300 Million Lawsuit, and Why It Matters," <https://www.greenpeace.org/usa/energy-transfer-lawsuit-story/>.

First! For Violation Of Federal And State Racketeering Statutes". This article is submitted as **Exhibit 16**.

The article is still available online worldwide and findable using search engines like Google via the URL:

<https://ir.energytransfer.com/news-releases/news-release-details/energy-transfer-files-federal-lawsuit-against-greenpeace/>

71. In this article, Energy Transfer calls GPI a "rogue environmental group", allegedly part of an "Enterprise [which] incited, funded, and facilitated crimes and acts of terrorism." Among other things, Energy Transfer accuses GPI of "employ[ing] a pattern of criminal activity and a campaign of misinformation for purposes of increasing donations and advancing their political or business agendas." It also alleges that GPI and the other defendants were responsible for a "misinformation campaign" that allegedly used "manufactured evidence." In other words: it alleges GPI does not shrink from deliberately misleading the general public with fake evidence.
72. According to Energy Transfer, it is supposedly the case that GPI "directly and indirectly funded eco-terrorists on the ground in North Dakota" in order to "further the Enterprise's corrupt agenda by inducing and directing violent and destructive attacks against law enforcement as well as Plaintiffs' property and personnel." GPI also allegedly engaged in "persistent attempted cyber-attacks and telephonic and electronic threats to the physical safety of executives."
73. Thus, Energy Transfer abused the Federal Lawsuit as an opportunity to publish the same serious and unsubstantiated allegations of criminal, dishonest and wrongful conduct. These allegations strike at the heart of GPI's integrity and reputation. As stated above, GPI merely put its signature, along with more than 500 other organizations, on an open letter by BankTrack. As explained, the Federal Lawsuit, in which these unsubstantiated allegations packaged as a federal RICO claim were submitted to court, was thrown out early on after a motion to dismiss.
74. When filing the Federal Lawsuit, Energy Transfer, through its current Executive Chairman and then-CEO Kelcy Warren, provided an insight into its rationale for bringing lawsuits against Greenpeace entities. Warren is the founder and former CEO of Energy Transfer, LP, and as such is Energy Transfer's most prominent voice in public debate. He is among the 500 richest people in the world, with an estimated personal fortune of between \$6 billion and \$7 billion.²⁵
75. On August 25, 2017, Kelcy Warren appeared on the television channel CNBC (at the time as CEO of Energy Transfer) for an interview about the Federal Lawsuit. Although there were other defendants in the Federal Lawsuit, the title of the interview read "ENERGY TRANSFER SUES GREENPEACE."
76. During the interview, Warren referred to Greenpeace and other public watchdogs as "these people" and said of them, "I am not afraid of these people at all." A transcript of this interview is submitted as **Exhibit 17**. Warren further made it clear that Energy Transfer's goal in bringing lawsuits against the defendant Greenpeace entities is to make them "pay" for their work:

²⁵ By early June 2024, Bloomberg saw Warren as the 399th richest person in the world; Forbes marked him as the 486th richest person in the world.

"Everybody's afraid of these environmental groups and the fear that it may look wrong if you fight back (...) but what they did to us is wrong, and they're going to pay for it [...] They're going to pay for this, they're going to pay for this."

77. Warren explicitly says "this can't be allowed to happen", and states "[t]hey're doing this elsewhere in the country, same cast of characters, and somebody's gotta stand up and we - we chose to do that." In doing so, in GPI's view, he is clearly signaling that he wants the lawsuit to set an example for all "environmental groups" and others participating in the public debate.

78. A month later (September 2017), Warren appeared for an interview with Chris Berg at Valley News Live. In this interview, Warren was even clearer about Energy Transfer's intentions. He said Energy Transfer filed the Federal Lawsuit '[to] send a message,' and not primarily to recover damages:²⁶

"We've created this kind of tolerance where, oh my gosh, you can't challenge these people in fear that someone is going to say you're not a friend of the environment. That's nonsense. [...] Could we get some monetary damages out of this thing, and probably we will? 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."

79. So the message is, "You can't do this," and the intention of Energy Transfer is to end all activities of organizations like GPI. Warren confirms this later in this interview, when Berg asks Warren, "are you trying to cease funding for organizations like Greenpeace?" Warren replies, "Absolutely."
80. He further affirms that the additional purpose of the Lawsuits is to make GPI (and the other Greenpeace organizations) pay in "non-monetary" ways for their participation in the public debate: "whether that paying is - is more monetary or whether that paying is uh, 'you gotta cease this stuff, people, you can't keep conducting yourself this way'."
81. A transcript of this interview is submitted as **Exhibit 18**.
82. Thus, Energy Transfer continually makes negative statements about GPI (and the other Greenpeace entities) and continues to stand by its public statements about GPI. It has several websites on which it posts statements about GPI, including the "Energy Transfer Facts" website and the "DAPL Pipeline Facts" website. On September 9, 2024, on the first mentioned website, Energy Transfer again accused GPI of "illegal actions" and "breaking the law" and indicated that it stands behind its previously made allegations against GPI (**Exhibit 19**).
83. Energy Transfer has even set up two special websites dedicated to the litigation against Greenpeace. The first website is titled "GREENPEACE LAWSUIT: THE FACTS ABOUT ENERGY TRANSFER PARTNERS VS. GREENPEACE," and is permanently available and findable at the url <https://greenpeaceetplawsuit.com/>. Screenshots of this website are submitted as **Exhibit 20**. This website contains, among other things, the unsubstantiated allegations against GPI and others, which were discussed above, and which are presented in this context as "FACTS." The second website, launched very recently, is entitled "TAKE BACK THE TRUTH." Screenshots of this website are submitted as **Exhibit 21**. The alleged "truth" presented here includes unsubstantiated claims such as, "Fact: Greenpeace organized, funded and supported illegal

²⁶ The broadcast can still be viewed online: Valley News Live Sept. 1, 2017, "Energy Transfer Partners CEO, Kelcy Warren, says DAPL was about a money raise", <https://www.valleynewslive.com/content/misc/Energy-Transfer-Partners-CEO-Kelcy-Warren-says-DAPL-was-about-a-money-raise-442409553.html>.

acts of trespass, property damage and violence" and "Fact: Greenpeace targeted Energy Transfer's business constituents with misinformation."

84. Energy Transfer also continues to communicate about the Lawsuits on social media. In September 2024, Energy Transfer published a tweet with a link to an article about the pending lawsuit, highlighting the risk that Greenpeace US could go bankrupt as a result of Energy Transfer's lawsuits. Energy Transfer calls this a "wonderful story" (**Exhibit 22**, p. 1). In another tweet, Energy Transfer links to an article characterizing Greenpeace as "spoiled brats" and in yet another tweet, Energy Transfer links to an article about the Lawsuits titled "A lawsuit may end the heyday of destructive environmental activism" (**Exhibit 22**, p. 2-3). The account Dakota Access Pipeline (@DAPLFacts) posts a tweet on 7 February 2025 with the text: "Many fervent activists are losing touch with the fact that free speech is not a license for violence, harassment and vandalism. #EnergyTransfer vs. #Greenpeace." (**Exhibit 22**, p. 4).

3.5 Procedural history

85. On July 23, 2024, GPI's counsel sent a letter to each of the Defendants holding the Defendants liable on behalf of GPI for the damages GPI has suffered and continues to suffer as a result of their tortious conduct, consisting of the commencement of SLAPPs and acts in connection therewith, including making false statements about GPI, as discussed in Section 3.4. These letters are submitted as **Exhibit 23**. GPI summoned the Defendants to withdraw the State lawsuit and accept liability.
86. On September 6, 2024, Defendants jointly responded to this letter through their counsel Trey Cox of the U.S. law firm Gibson Dunn & Crutcher (**Exhibit 24**). In this letter, Energy Transfer disputes that its conduct, including bringing the State Lawsuit and the Federal Lawsuit, qualifies as a SLAPP. Energy Transfer argues that it was justified in bringing the Lawsuits against GPI, as GPI was allegedly guilty of "illegal actions" and "breaking the law." However, it fails (again) to specify exactly what these supposed illegal actions consisted of.
87. Finally, Energy Transfer argues that "no existing Dutch or European laws referred to in the Letter can result in any form of liability of Energy Transfer, a U.S.-based company." As will be further explained in this summons, this position is incorrect, both generally and in this particular case.
88. On November 19, 2024, GPI, through its counsel, responded to Energy Transfer's letter (**Exhibit 25**), pointing out that under, among others, the anti-SLAPP Directive (to be discussed below) and Dutch law, there is ample basis for legal action in the Netherlands against Energy Transfer. In a brief response on December 4, 2024, Energy Transfer stated that after "careful consideration" of the legislation cited by GPI, it stands by its previously adopted position and will not comply with GPI's demands (**Exhibit 26**).
89. GPI therefore feels compelled to take this matter to the District Court.

4 LEGAL FRAMEWORK

90. Pursuant to Article 6:162 (1) and (2) of the Civil Code, Dutch civil law prohibits tortious conduct (*onrechtmatig handelen*), which is understood to mean an infringement of a right and an act or omission in violation of a duty imposed by law or of what according to unwritten law has to be regarded as proper social conduct.²⁷

²⁷ In section 6.3 of this summons, GPI will further explain that Dutch law applies to this case.

91. The relevant legal duties in this context include various fundamental law standards, as GPI will explain below (par. 4.1). The applicable standard of care in this case is further fleshed out by soft law on SLAPPs (para. 4.2). Furthermore, European Union law standards, including at least the EU Directive aimed at providing protection against SLAPPs, both within and outside the EU, provide both an independent basis for adjudication of the claims and a further interpretation of the standard of care (par. 4.3).
92. In addition, Dutch civil law prohibits parties from abusing their rights, including (but not limited to) exercising a right with no other purpose than to damage another person or when, taking into account the disproportion between the interest in exercising a right and the interest that is harmed as a result, one could not reasonably have decided to exercise that right (Article 3:13(2) of the Civil Code).

4.1 Constitutional standards

93. Under Article 10 of the European Convention on Human Rights ("**ECHR**"), among others, GPI is entitled to the right to freedom of expression. According to the wording of Article 10(1) ECHR, this right includes the right to impart information and the right of the public to receive information. Moreover, according to established case law of the ECtHR, it follows from Article 10 ECHR that the State has a positive obligation to ensure these rights for its residents.²⁸ Under Article 8 ECHR, among others, GPI further has the right to protection of its reputation.²⁹ Article 8 ECHR imposes positive obligations on the State to ensure the rights protected under this article, including in horizontal relations.³⁰
94. These rights also follow from other norms of international law, such as Articles 17 and 19 of the International Covenant on Civil and Political Rights ("**ICCPR**") and, in the context of European Union law, Articles 7 and 11 of the Charter of Fundamental Rights of the European Union (the "**Charter**").
95. In the context of SLAPPs, it is also important to note that, as follows from various international standards, including Article 6 ECHR, parties are in principle entitled to access to a court. At the same time, under Article 17 ECHR, parties cannot derive any rights from the ECHR (and therefore cannot invoke it) if their conduct is aimed at "destroying any of the rights and freedoms set forth in the Convention; therefore, no person may be able to take advantage of the provisions of the Convention to perform acts aimed at destroying the aforesaid rights and freedoms."³¹

²⁸ See, for example, recently, ECHR 17 December 2024, Nos. 32678/18, 17172/20 and 30564/21 (*Side by Side International Film Festival et al. v. Russia*), para. 13: "The Court reiterates the key importance of freedom of expression as one of the preconditions for a functioning democracy. Genuine, "effective" exercise of this freedom does not depend merely on the State's duty not to interfere, but may require positive measures of protection."

²⁹ ECHR 16 February 2016, no. 8895/10 (*Ärztzekammer Für Wien and Dörner v. Austria*), para. 62.

³⁰ ECHR 1 March 2022, no. 35582/15 (*I.V.T. v. Romania*), para. 45: "The Court reiterates that while the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference. In addition to this negative undertaking, there may be positive obligations inherent in effective respect for private and family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of relations of individuals between themselves."

³¹ ECHR 27 June 2023, No. 47833/20 (*Lenis v. Greece*), para. 38 and references therein.

4.2 International 'soft law' sources

96. With respect to SLAPPs, there are several international soft law sources which have significant relevance when interpreting the directly binding legal standards applicable in this case. GPI will outline these below.

97. There have long been concerns internationally about the misuse of the right of access to justice to silence critical voices, thus limiting public debate on important issues. For example, in 2012, before the use of the term "SLAPPs" became commonplace in Europe, the Committee of Ministers of the Council of Europe expressed concerns about the (unjustified) use of litigation as a form of intimidation or as a means to stifle legitimate criticism on issues of public interest. In particular, the Committee of Ministers points to the phenomenon of 'libel tourism,' which it describes as

"[a] form of forum shopping when a complainant files a complaint with the court thought most likely to provide a favorable judgment (including in default cases) and where it is easy to sue. In some cases a jurisdiction is chosen by a complainant because the legal fees of the applicant are contingent on the outcome ("no win, no fee") and/or because the mere cost of the procedure could have a dissuasive effect on the defendant. The risk of forum shopping in cases of defamation has been exacerbated as a consequence of increased globalization and the persistent accessibility of content and archives on the Internet (...)

In some cases libel tourism may be seen as the attempt to intimidate and silence critical or investigative media purely on the basis of the financial strength of the complainant ("inequality of arms"). In other cases the very existence of small media providers has been affected by the deliberate use of disproportionate damages by claimants through libel tourism."

98. The Committee of Ministers emphasizes that this "libel tourism" - which may be an element of a SLAPP - is a violation of the right to freedom of expression, including the right to impart information and the public's right to receive information. The Committee of Ministers also points to established ECtHR case law, from which it follows that the award of disproportionate damages in expression cases is a violation of the rights protected by Article 10 ECHR.

This established line in ECtHR case law was reaffirmed, for example, in the *Independent Newspapers* judgment in 2017. Here, the ECtHR ruled that a EUR 1.25 million award of damages against an Irish newspaper by an Irish jury was disproportionate, and in violation of Article 10 ECHR, among other things holding:³²

"As the Court has indicated previously, it is not necessary to rule on whether the impugned damages' award had, as a matter of fact, a chilling effect on the press. As a matter of principle, unpredictably large damages' awards in libel cases are considered capable of having such an effect and therefore require the most careful scrutiny. (...)

Where, as in this case, there is a shortcoming in the operation of the safeguard at first instance, a defendant may have little option but to bring an appeal against the level of damages awarded, since only through appellate scrutiny can it be assured that the amount bears a reasonable relationship of proportionality to the harm suffered by the plaintiff. The Court notes that this may entail both considerable

³² ECHR 15 June 2017, No. 28199/15 (*Independent Newspapers v. Ireland*), at grounds 85, 102 and 104.

costs and inevitable delay before the decision is given, a fact emphasized by other defamation cases both concluded and pending (...)

unpredictably high damages in libel cases are considered capable of having a chilling effect and they therefore require the most careful scrutiny and very strong justification."

99. Incidentally, in this case, the national court's holding that the publication at issue was defamatory was not at issue: it was purely about the amount of damages awarded. To that extent, this judgment is not a clear example of a SLAPP case. However, it does clearly show that (a claim for) remarkably high damages will almost always violate Article 10 ECHR.
100. A clear example of what would nowadays be qualified as a SLAPP is the *Steel & Morris* case before the ECtHR, in which two private individuals in the United Kingdom had had to pay high damages after a suit brought by McDonalds and others, for distributing critical leaflets. The ECtHR found the award of these high damages to be disproportionate and in violation of Article 10 ECHR, among other things because McDonalds, as a powerful company, had not been able to prove that it had actually suffered any harm from distributing a limited number of pamphlets.³³
101. On October 16, 2017, in Malta, investigative journalist Daphne Caruana Galizia was murdered with a car bomb. At that time, as a result of her thorough reporting in the public interest on corruption, among other issues, there were about 50 lawsuits pending against her, both inside and outside Malta, including at least one case in the United States (Arizona), where she was facing a claim for as much as USD 40 million in damages.³⁴ These events caused a worldwide stir and underscored that SLAPPs are a major problem in the EU as well. In the following years, more and more attention was given to SLAPPs against EU-based parties exercising their right to freedom of expression.
102. The then-Council of Europe Commissioner for Human Rights, Dunja Mijatović, published a "Comment" in October 2020 entitled "Time to take action against SLAPPs" (**Exhibit 27**). Based on various studies, the Commissioner noted that the problem of SLAPPs was worsening in Europe and that "journalists, activists and advocacy groups" are especially targeted by such lawsuits. She pointed to several other examples in addition to the Daphne Caruana Galizia case, and stressed that these were just a few examples of SLAPPs at the time.
103. Underlining that the problem affects all public watchdogs, the Commissioner said, "Public watchdogs in general are affected. Activists, NGOs, academics, human rights defenders, indeed all those who speak out in the public interest and hold the powerful to account might be targeted."
104. Based on established case law of the ECtHR, NGOs such as GPI (like the media) qualify as public watchdogs entitled to a high level of protection of their rights under Article 10 ECHR.³⁵

³³ ECHR 15 February 2005, no. 68416/01 (*Steel & Morris v. United Kingdom*), para. 85-98.

³⁴ P. Milewska June 15, 2023, "SLAPPs, Daphne's Law, and the Future of Journalism," *Verfassungsblog*, See also: Daphne Caruana Galizia Foundation, 'Defense against frivolous and vexatious libel suits', <https://www.daphne.foundation/en/justice/vexatious-libel-cases> ("In May 2017, Ali Sadr Hasheminejad, owner and chairman of Pilatus Bank, sued Daphne in an Arizona court in his and Pilatus Bank's name. The claim was for US\$40,000,000 in damages.")

³⁵ As established, inter alia, in this leading judgment: ECHR 22 April 2012, no. 48876/08 (*Animal Defenders International v. United Kingdom*), para. 103. See also Commission Recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation'), 27 April 2022, SWD(2022) 117 final, para. 7:

This is particularly true when they call attention to issues of public interest. The ECtHR has recognized NGOs as parties making an "important contribution to the discussion of public affairs," and, according to the ECtHR, the proper functioning of civil society therefore has "significant impact on the proper functioning of a democratic society."³⁶ Thus, in cases revolving around the freedom of expression of NGOs, the State's discretion is limited, and the ECtHR will "scrupulously" assess each interference for necessity and proportionality, as well as critically evaluating the application of any positive obligations of the State.³⁷

105. The Commissioner described some common characteristics of SLAPPs:

"SLAPPs are typically disguised as civil or criminal claims such as defamation or libel and have several common features.

First, they are purely vexatious in nature. The aim is not to win the case but to divert time and energy, as a tactic to stifle legitimate criticism. Litigants are usually more interested in the litigation process itself than the outcome of the case. The aim of distracting or intimidating is often achieved by rendering the legal proceedings expensive and time-consuming. Demands for damages are often exaggerated.

Another common quality of a SLAPP is the power imbalance between the plaintiff and the defendant. Private companies or powerful people usually target individuals, alongside the organizations they belong to or work for, as an attempt to intimidate and silence critical voices, based purely on the financial strength of the complainant.

It should be no surprise that SLAPPs are multiplying in areas such as environmental and consumer protection, crime prevention or corruption allegations. A typical example is when a large company sues journalists or activists who have exposed an environmental disaster." (emphasis added)

106. The Commissioner called for the design of a "comprehensive response" against SLAPPs, stressing the great importance of countering SLAPPs, not only to protect the space for public debate, but for the preservation of a democratic society as a whole:

"While this practice primarily affects the right to freedom of expression, it also has a dramatic impact on public interest activities more broadly: it discourages the exercise of other fundamental freedoms such as the right to freedom of assembly and association and undermines the work of human rights defenders."

107. This Comment was echoed in the development of laws and regulations against SLAPPs, as will be explained below. The Comment also played an important role in the ECtHR's first judgment that mentions SLAPPs, the *OOO Memo v. Russia judgment*. To the extent relevant, the ECtHR sees the Comment as evidence of "the growing awareness of the risks that court

"Human rights defenders also play an important role in European democracies, especially in upholding fundamental rights, democratic values, social inclusion, environmental protection and the rule of law. They should be able to participate actively in public life and make their voices heard on policy matters and in decisionmaking processes without fear of intimidation. Human rights defenders refer to individuals or organizations engaged in defending fundamental rights and a variety of other rights, including environmental and climate rights, women's rights, LGBTIQ rights, the rights of the people with a minority racial or ethnic background, labor rights or religious freedoms."

³⁶ ECHR 8 November 2016, no. 18030/11 (*Magyar Helsinki Bizottság v. Hungary*), para. 166-167.

³⁷ *Animal Defenders International*, r.o. 102 and 103.

proceedings instituted with a view to limiting public participation bring for democracy, as highlighted by the Council of Europe Commissioner for Human Rights."³⁸

108. This threat has been recognized worldwide. In 2021, the then-UN Special Rapporteur on freedom of peaceful assembly and of association, Annalisa Ciampi, published a note on SLAPPs in which she identifies "a significant increase worldwide" of SLAPPs (**Exhibit 28**). She summarizes common characteristics of a SLAPP as follows:

"[The term SLAPP] generally refers to a civil lawsuit filed by a corporation against non-government individuals or organizations (NGOs) on a substantive issue of some political interest or social significance. SLAPPs aim to shut down critical speech by intimidating critics into silence and draining their resources. In the process, they distract and deflect discussions on corporate social responsibility, and - by masquerading as ordinary civil lawsuits - convert matters of public interest into technical private law disputes.

Often based upon ambiguous and elastic provisions of law, SLAPPs use a range of tactics to exhaust resources, campaign capacity and morale:

- They resort to motions, injunctions and other procedurally onerous processes (particularly the expensive and resource-intensive discovery/disclosure process) to impose heavy burdens on activists and civil society organizations
- They often target individual campaigners, as well as the organizations they work for, to maximize the SLAPP's capacity to intimidate.

They generally include exorbitant claims for damages and allegations designed to smear, harass and overwhelm the campaigners

SLAPPs threaten advocacy activities and therefore undermine the ability of civil society actors to effectively exercise their rights to freedom of expression, of assembly and of association."

109. This description is consistent with previous authoritative descriptions of what a SLAPP may be.³⁹ Thus, there was some consensus as early as 2021 on the elements from which it follows that a lawsuit (or lawsuits) are SLAPP(s). In the same note, the Special Rapporteur expressed concern about developments surrounding SLAPPs in the United States:

"The SLAPP trend has been particularly pronounced in the US, fueled and aided by exorbitant legal fees, the "American rule" of costs apportionment (whereby each party to a lawsuit is responsible for its own attorney fees), and an absence of caps on damages. In a recent report, the free speech group Index on Censorship identified civil litigation as one of a number of growing threats to US press freedom. (...) A worrying new approach has been the use of the Racketeering Influenced and Corrupt Organizations Act (RICO) to intimidate advocacy groups and activists by enabling corporations to smear these groups as 'criminal enterprises,' while

³⁸ ECHR 15 March 2022, no. 2840/10 (*OOO Memo v. Russia*), para. 23.

³⁹ And also at other UN documents and resolutions, including UN Human Rights Council, Resolution on the safety of journalists, Oct. 6, 2022, A/HRC/RES/51/9, <https://digitallibrary.un.org/record/3992428>, with a call for UN Member States to take action against SLAPPs given the seriousness of "the rise of strategic lawsuits against public participation, including by business entities, to pressure, intimidate or exhaust the resources and morale of journalists, and thereby stop them from performing their work, including on matters of public interest" (this protection, as noted above, also attaches to other 'public watchdogs').

claiming exorbitant damages (RICO entitles plaintiffs to claim treble damages as a punitive measure) for the 'harm' they claim to have suffered."

110. The Special Rapporteur pointed out that the increase in SLAPPs is all the more unacceptable now that companies are subject to international law obligations, both direct and indirect (e.g., the UN Guiding Principles) to respect human rights. Given the primacy of international law, the Special Rapporteur noted that by filing SLAPPs, companies act unlawfully in any event, regardless of the legality under domestic/national law:

"It is a well established principle of international law that the characterization of an act as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law. The obligations of corporations under international law, therefore, prevail over all national laws and regulations, including those protecting human rights."

111. Following the murder of Daphne Caruana Galizia, there were many voices in the European Union calling for binding EU legislation to provide journalists, activists, NGOs and other public watchdogs with better protection against SLAPPs. In response to this, numerous parties united in the broad "Coalition Against SLAPPs in Europe" ("**CASE**"). Inspired in part by Daphne Caruana Galizia's sons - who are burdened with SLAPPs that have continued despite her death - CASE labored to establish legal safeguards against SLAPPs in the EU. These efforts resulted, in part, in the creation of the laws and regulations to be discussed below.
112. The European Parliament ("**EP**") adopted a resolution on SLAPPs in 2021, in which the EP refers to a long list of studies and position papers on SLAPPs and noted that (i) SLAPPs have "a direct and detrimental impact on democratic participation, societal resilience and dialogue" and (ii) SLAPPs are in direct conflict with the core values of the EU as enshrined in Article 2 TEU (**Exhibit 29**).⁴⁰
113. The EP therefore expressed its concerns about SLAPPs and called on the Commission to develop "hard" and "soft" legislation to protect victims of SLAPPs (including "NGOs, civil society and other actors engaging in public participation, such as those working on human rights and environmental issues," under M). The EP also mentioned that "SLAPPs and SLAPP threats may also be brought against watchdogs within the Union by actors in third countries and before courts in third countries" (Exhibit 29, under N). Without EU legislation, SLAPPs would, according to the EP, "continue to threaten democracy, the rule of law and the fundamental rights of freedom of expression, association and peaceful assembly and information in the Union" (para. 22). The EP called for a broad definition of 'SLAPP' because "if measures only address defamation lawsuits, actions on other civil matters or criminal proceedings may still be used at the initiative of claimants based in or outside the Union" (para. 22).
114. In April 2022, the European Commission (the "**Commission**") took up the EP's call by publishing a Recommendation and the first draft of the anti-SLAPP directive, to be discussed below.⁴¹

⁴⁰ These values as enshrined in Article 2 TEU are: "the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

⁴¹ European Commission April 27, 2022, Recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"), SWD(2022) 117 final.

4.3 Anti-SLAPP Directive and Recommendation Committee of Ministers

115. In April 2022, the Commission published the first proposal for an anti-SLAPP Directive. This Directive is also called "Daphne's Law," in memory of Daphne Caruana Galizia whose case helped lead to the creation of this legislation. After going through the usual legislative process, Directive 2024/1069 on the protection of targets of SLAPP (hereinafter also "the **Directive**") was finally adopted on April 11, 2024 and entered into force on May 6, 2024.⁴² The transposition deadline is set at two years after entry into force, i.e. May 7, 2026 (Article 22(1) Directive).⁴³ The authentic English language version of the Directive is submitted as **Exhibit 30**.

116. The Directive helps give effect to the right to freedom of expression and freedom of information protected by Article 11 Charter and Article 10 ECHR (Recital 4 of the Directive). This right includes the freedom to hold opinions and to impart information to the public, without interference from public authorities and "regardless of frontiers". It follows from the recitals of the Directive that its purpose is to ensure that journalists and human rights defenders within the EU and its Member States can actively participate in public life and debate, and hold parties to account without fear of intimidation (recital 11 Directive). Human rights defenders are defined in the Directive as follows (Recital 11 Directive):

"Human rights defenders include individuals, groups and organisations in civil society that promote and protect universally recognized human rights and fundamental freedoms. Human rights defenders are committed to promoting and safeguarding civil, political, economic, social, cultural, environmental, climate, women's and LGBTIQ rights and to fighting against direct or indirect discrimination as set out in Article 21 of the Charter. Considering the Union's environmental and climate policies, attention should also be given to environmental rights defenders as they play an important role in European democracies."

117. The recitals echo the threat of SLAPPs to public debate and a democratic society that has been widely signalled, as well as the need for EU legislation to achieve a minimum level of protection against SLAPPs within the Union.

118. The basic premise of the Directive is that the rules it lays down apply to SLAPPs with a 'cross-border' element, although Member States are free to provide more far-reaching protection against them. In this context, the Directive pays particular attention to the threat posed by SLAPPs brought in third countries (i.e. outside the EU) against public watchdogs based in the EU (recital 43 of the Directive, emphasis added):

"In the cross-border context, it is also important to recognize the threat of SLAPPs in third-countries targeting journalists, human rights defenders and other persons engaged in public participation who are domiciled in the Union. SLAPPs in third-countries may involve excessive damages being awarded against persons engaged in public participation. Court proceedings in third-countries are more complex and costly for the targets of SLAPPs. To protect democracy and the right to freedom of expression and information in the Union and to avoid the safeguards provided by this Directive being undermined by recourse to court proceedings in other

⁴² The full title of the Directive is as follows: Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation').

⁴³ For a detailed overview of the legislative train schedule, see the Legislative Train Schedule page on the EP site, available at: <https://www.europarl.europa.eu/legislative-train/package-european-democracy-action-plan/file-initiative-against-abusive-litigation-targeting-journalists-and-rights-defenders>.

jurisdictions, it is important to provide protection against manifestly unfounded claims and abusive court proceedings against public participation in third-countries."

119. The Directive in addition underlines that SLAPPs also have an impact on other rights of their victims than freedom of expression, such as the right to reputation (recital 16) "Court proceedings against public participation may have an adverse impact on the credibility and reputation of natural and legal persons that engage in public participation and may exhaust their financial and other resources." Indeed, as is made explicitly clear in the Directive (recital 46): "It is typical in SLAPPs that those targeted suffer severe financial repercussions and psychological and reputational harm. Causing such harm is one of the aims of SLAPP claimants when they initiate abusive court proceedings against public participation."
120. As will be explained below, in light of these high risks to victims of SLAPPs, the Directive accordingly contains several specific provisions to protect parties based in the EU from SLAPPs.
121. Article 1 of the Directive defines the subject matter of the Directive, namely "[to provide] safeguards against manifestly unfounded claims or abusive court proceedings in civil matters with cross-border implications brought against natural and legal persons on account of their engagement in public participation." Article 2 of the Directive limits the effect of the Directive to civil or commercial cases with "cross-border implications" brought by the initiation of "civil proceedings, including procedures for interim and precautionary measures and counteractions, whatever the nature of the court or tribunal." Article 3(1) Directive states that the Directive is minimum harmonization, and thus Member States are free to provide further protection for victims of SLAPPs.
122. The Directive provides protection against "manifestly unfounded claims or abusive court proceedings" (Article 1 Directive), with "abusive court proceedings" broadly defined under Article 4(3) Directive:

"court proceedings which are not brought to genuinely assert or exercise a right, but have as their main purpose the prevention, restriction or penalization of public participation, frequently exploiting an imbalance of power between the parties, and which pursue unfounded claims. Indications of such a purpose include for example:

 - (a) the disproportionate, excessive or unreasonable nature of the claim or part thereof, including the excessive dispute value;
 - (b) the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;
 - (c) intimidation, harassment or threats on the part of the claimant or the claimant's representatives, before or during the proceedings, as well as similar conduct by the claimant in similar or concurrent cases;
 - (d) the use in bad faith of procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping or the discontinuation of cases at a later stage of the proceedings in bad faith."
123. Importantly, this is not an exhaustive or cumulative set of criteria: these are merely "indicators" of a SLAPP. There are several other indicators and indications in the recitals of the Directive from which it can be inferred that a case is a SLAPP. Here it is important to note that even if a case is partially founded, this does not rule out the possibility that it is a SLAPP (recital 29 Directive):

"Claims made in abusive court proceedings against public participation can be either fully or partially unfounded. This means that a claim does not necessarily have to be completely unfounded for the proceedings to be considered abusive. For example, even a minor violation of personality rights that could give rise to a modest claim for compensation under the applicable law can still be abusive, if a manifestly excessive amount or remedy is claimed."

124. As far as relevant in the present case, the Directive's Chapter 5 provides protection to EU-based parties against SLAPPs in third countries, *i.e.* countries outside the EU. Article 16 of the Directive provides protection against enforcement of judgments rendered in third countries in SLAPP cases: that is not (yet) at issue in this case.

125. Article 17(1) of the Directive provides further protection for parties established in an EU Member State against SLAPPs brought against them in third countries:

"Member States shall ensure that, where abusive court proceedings against public participation have been brought by a claimant domiciled outside the Union in a court or tribunal of a third-country against a natural or legal person domiciled in a Member State, that person may seek, in the courts or tribunals of the place where that person is domiciled, compensation for the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third-country."

126. It therefore follows that in EU Member States it should be possible for a party domiciled in that Member State, against whom a SLAPP in a third country is pending, to bring a claim for damages against the plaintiff in the SLAPP before the courts of that Member State. According to the recitals to the Directive, in this regard, the EU-based victim of a SLAPP in a third country "should apply irrespective of a decision having been rendered or of a decision being final, as targets of SLAPPs can suffer damage and incur costs from the start of court proceedings and possibly even without any decision being rendered, such as in the case of a withdrawal of the claim" (recital 44).

127. Under Article 17(2) Directive, Member States may limit the application of the provisions of Article 17(1) Directive to a certain extent while the SLAPP is still pending in the third country. The Netherlands has indicated that it will not make use of this limitation, as will be further explained below. Article 17(1) of the Directive therefore applies in full to the Netherlands.

128. It further follows from the Directive that there should be broad scope for adjudication of claims in cases where victims of SLAPPs seek legal protection, including an order for publication of the judgment to be rendered in such a case (recital 31 Directive)

"The main objective of giving courts or tribunals the possibility of imposing penalties or other equally effective appropriate measures is to deter potential claimants from initiating abusive court proceedings against public participation. Other appropriate measures, including the payment of compensation for damage or the publication of the court decision, where provided for in national law, should be as effective as penalties."

129. Just before the Directive was finally adopted, on April 11, 2024, the Committee of Ministers of the Council of Europe published a Recommendation on combating SLAPPs on April 5, 2024 (**Exhibit 31**), considering that under Article 10 ECHR, Member States have a positive obligation, among others, to ensure a safe and positive environment for participation in public debate, without fear of reprisal (p. 1).⁴⁴

⁴⁴ In this regard, see also ECHR 14 September 2010, No. 2668/07 and Others (*Dink v. Turkey*), para. 106.

130. The Committee of Ministers further underlines the particular threat posed by SLAPPs with a "cross-border" element, given the additional complexity, cost and stress that such cases typically entail (para. 11). The Committee of Ministers also encourages Member States of the Council of Europe to ensure the protection of Article 17(1) Directive for their residents (para. 14):

"Member States are encouraged to introduce rules to ensure that, where SLAPPs have been brought before judicial or other authorities of a third country against a natural or legal person domiciled in a member State, that person may seek, before judicial or other authorities of the place where they are domiciled, compensation of the damages and the costs incurred in connection with the proceedings before the judicial or other authorities of the third country, irrespective of the domicile of the claimant in the proceedings in the third country."

5 JURISDICTION AND APPLICABLE LAW

5.1 Framework of review regarding jurisdiction

131. Article 7, introductory sentence and paragraph 2 Brussels I bis states:

" A person domiciled in a Member State may be sued in another Member State:

(...) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur."

132. It follows from the jurisprudence of the Court of Justice of the EU that in matters of tort law, it is possible to sue both in the courts of the place where the act causing the harm took place (*Handlungsort*) and the place where the harm occurred (*Erfolgsort*). The plaintiff can choose at which place to sue the defendant(s). The Defendants are all domiciled outside the EU, with which the jurisdiction of the Dutch court follows from Article 6 opening words, and under (e) of the Code of Civil Procedure, which is based on (and according to established case law is interpreted in the same way as) Article 7, opening words and paragraph 2, Brussels Ia.
133. As explained above, Article 17 (2) of the Directive obliges Member States to ensure that the courts in that Member State have jurisdiction to hear cases in which victims of SLAPPs in third countries claim compensation for "the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third-country." This is already possible in the Netherlands, given the provisions of Article. 6 opening words and under (e) of the Code of Civil Procedure.⁴⁵
134. On October 1, 2024, as part of internet consultation, the government published the draft Anti-SLAPP Directive Implementation Act (*Implementatiewet anti-SLAPP Richtlijn*) and the accompanying draft Explanatory Memorandum (these documents are submitted as **Exhibit 32** and **33**).⁴⁶ This is a limited legislative amendment. The government explains this in the draft Explanatory Memorandum (*Memorie van Toelichting*) as follows:

⁴⁵ See for example District Court of The Hague 9 October 2019, ECLI:NL:RBDHA:2019:10254 (*Ard-Choille*), para. 5.41 and 5.42; District Court of Overijssel, location Almelo 20 May 2020, ECLI:NL:RBOVE:2020:1808, para. 2.9; as well as District Court of Amsterdam 9 March 2023, ECLI:NL:RBAMS:2021:950 (*Bellingcat/RIA FAN*), para. 2.1; Court of Appeals of The Hague 6 October 2015, ECLI:NL:GHSHE:2015:3904 (*X/Google*), r.o. 3.3.2. For European case law in this regard, see, for example, ECJ EU 28 January 2015, C-375/13, ECLI:EU:C:2015:37 (*Kolassa*), ECJ EU 12 September 2018, C-304/17, ECLI:EU:C:2018:701 (*Löber v Barclays*).

⁴⁶ See: <https://www.internetconsultatie.nl/antislapp/b1>.

"Except for the measure of providing security for litigation costs and damages included in this Directive, Dutch (procedural) law already provides for the measures prescribed by the Directive. No separate implementation is therefore necessary for this."

135. The government explicitly confirms in the draft Explanatory Memorandum that implementation of the Directive is also not necessary with respect to Article 17(1) of the Directive, considering:

This provision requires Member States to ensure that if a SLAPP has been brought by a plaintiff domiciled or established outside the Union before a court in a third country against a SLAPP target domiciled in a Member State, that SLAPP target may seek compensation from a court of his or her domicile or establishment for damages and costs incurred in connection with the proceedings before the third country court. Dutch law already provides for this possibility.

The Dutch regulation is in line with Article 7 Brussels Ia Regulation. Based on consistent case law, the provision of Article 7 under 2 (place where the harmful event occurred) refers to both the harmful event and the place where the direct damage occurred. In the case of SLAPPs in a third country directed against a person residing in the Netherlands, it may be assumed that the direct harm to this person (also) occurs in the Netherlands. This means that provision has already been made for the implementation of Article 17 of the Directive."

136. As mentioned above, the government further waives the possibility of limiting protection for victims of SLAPPs under Article 17(2) of the Directive, considering:

"The second paragraph of Article 17 of the Directive allows Member States to limit the possibility to seek compensation in the Member State of the SLAPP target while proceedings are pending in a third country. This possibility will not be used because there is no reason to limit the possibilities of potential SLAPP targets in this regard."

137. It follows that the government's aim is the broadest possible protection of "potential SLAPP targets". Thus, regarding protection against third country SLAPPs, there is already a provision in Dutch procedural law, and implementation is not necessary. However, Article 17(1) of the Directive does provide further guidance on the interpretation of the existing criteria for jurisdiction.

5.2 Application of the framework of review to the present case

138. The basis of this case is the Defendants' tortious acts against GPI, or abuse of rights against GPI, in particular by filing SLAPPs against GPI in a third country (the United States) and all acts related thereto, including publishing false statements about GPI that are available and findable worldwide (including in the Netherlands) via the Internet.⁴⁷
139. GPI, which is domiciled in the Netherlands, is suffers damages as a result, on the basis of which it may be assumed that the direct damage for GPI (also or in any case) occurs in the Netherlands. In this regard, see the government's explanation cited above, specifically in the context of SLAPPs: "In the case of SLAPPs in a third country directed against a person residing in the Netherlands, it may be assumed that the direct damage for this person (also) occurs in the Netherlands." Thus, that is true in this case. GPI can therefore claim the damages suffered it suffers due to Energy Transfer's conduct before Dutch courts on the basis of (in any case)

⁴⁷ In this regard, see CJEU Oct. 25, 2011, ECLI:EU:C:2011:685 (*eDate*).

Article 6 opening words and under e of the Code of Civil Procedure, read in conjunction with Article 7 of the Brussels Ia Regulation and Article 17 (1) of the Directive.

140. The damages suffered by GPI can be classified as monetary loss, damages as a result of the intentional hindrance of GPI in achieving its public interest goals, and reputational damage as a result of the SLAPP, including the associated publication of false statements. For a more detailed discussion, GPI refers to par. 7 of this summons: see there.
141. GPI is suffering these damages (also or in any case) in the Netherlands, where the center of its interests is. GPI has been statutorily established in the Netherlands (in Amsterdam) since 1979 and has its offices at Surinameplein in Amsterdam, where a significant part of its staff also works: 131 of its employees work in the Netherlands (228 other employees work in various countries worldwide). GPI's employees working in the Netherlands have employment contracts governed by Dutch law. GPI has Public Benefit Organization (ANBI) status and in this relation publishes the information required by that status annually.⁴⁸ The most recent annual accounts of GPI (2023) are submitted as **Exhibit 34**. GPI further maintains its bank accounts in the Netherlands.
142. As stated above, GPI is the holder of the trademarks of the Greenpeace network. The other entities in the Greenpeace network receive permission from GPI to use these marks through a license agreement governed by Dutch law.
143. GPI is also the charterer of several vessels, such as the famous *Arctic Sunrise* and the *Rainbow Warrior*, which sail under the Dutch flag. GPI employs a total of 89 crew members, all of whom have employment contracts under Dutch law. The crew working on GPI's ships, and residing in the EU, are therefore covered by the Dutch Merchant Shipping Pension Fund Foundation.
144. Based on the foregoing, Dutch courts have jurisdiction in this case. To the extent the Court requires further proof of the proposition that the center of GPI's interests is located in the Netherlands, and/or the proposition that GPI has suffered damages in the Netherlands in the ways described above, GPI hereby expressly offers such proof.
145. The relative jurisdiction of the Amsterdam District Court follows from the provisions of Article 102 of the Code of Civil Procedure.⁴⁹
146. Finally, GPI would like to point out that this case is special in several respects because - to its knowledge - there is no precedent for it. After all, it seeks protection against a SLAPP in a country located outside the EU, involving several new relevant norms (including the Directive and soft law on SLAPPs). These norms require application of national procedural law in line with the goal of achieving far-reaching protection against SLAPPs. The interpretation of domestic procedural law should therefore be in line with the provisions of these standards. See in this regard recital 32 of the Directive, which explicitly explains that the application of "all procedural safeguards" of the Directive may be "not unduly arduous" for victims of SLAPPs. It would therefore be in conflict with the intention of the Directive and the consensus within the EU/Council of Europe that follows from the 'soft law' norms quoted above to raise high formal thresholds in national procedural law for protection against SLAPPs. This is all the more true since the Dutch government itself indicates that no adaptation of Dutch law is necessary for the implementation of the Directive, making the contents of the Directive directly enforceable.

⁴⁸ See: <https://www.greenpeace.org/international/about/annual-report/>.

⁴⁹ See in this regard Amsterdam District Court, March 9, 2021, ECLI:NL:RBAMS:2021:950 (*Bellingcat/OOO Fan*), para. 2.1.

5.3 Applicable law

147. Since GPI's damages are occurring in the Netherlands and consist, among other things, of reputational damage, as explained above, pursuant to Article 10:159 of the Dutch Civil Code, read in conjunction with Article 4(1) of the Rome II Regulation, the Directive and Dutch law apply to this case.⁵⁰

6 TORT AND ABUSE OF RIGHTS BY ENERGY TRANSFER

148. Energy Transfer's conduct towards GPI, which is to be classified as a "SLAPP," including Energy Transfer's commencement of the Federal Lawsuit and the State Lawsuit (together: the "**Lawsuits**") against GPI, and the making of inaccurate statements about GPI, is tortious and qualifies as an abuse of rights under Dutch civil law (Article 6:162 and 3:13 of the Civil Code), read in conjunction with Articles 8 and 10 ECHR, Article 7, 10 and 11 of the Charter and the provisions of the Directive. GPI will explain below what this tortious conduct and abuse of right consists of. It will first deal with the tortious conduct pursuant to Article 6:162 of the Civil Code.
149. Energy Transfer is acting tortiously towards GPI within the meaning of Article 6:162 of the Dutch Civil Code, by acting in breach of its statutory duties and in violation of what is proper social conduct according to unwritten law in society.
150. The legal obligations incumbent on Energy Transfer are further elaborated, *inter alia*, in Articles 8 and 10 ECHR and the Directive, read in conjunction with Articles 7 and 11 of the Charter.⁵¹ Energy Transfer's conduct, as further explained below, is contrary to the legal obligations incumbent upon it arising from these standards, in particular refraining from infringing GPI's freedom of expression and from infringing GPI's reputation.
151. Moreover, as explained, the State has a positive obligation under Articles 8 and 10 ECHR to ensure the rights protected by those provisions. This positive obligation is fleshed out by the provisions of the Directive and the other sources of law discussed above. GPI's strong interest in protection from the Dutch courts against the SLAPPs brought by Energy Transfer also lies herein. After all, Energy Transfer's conduct leads to a great "chilling effect" for GPI, and for that matter also for other organizations that might wish to comment on Energy Transfer or other powerful players in the United States. This degree of impairment of GPI's rights under Articles 8 and 10 ECHR (and of the public under Article 10 ECHR) is unacceptable in the Dutch and European legal sphere.
152. It is further crystal clear from the applicable fundamental law standards, the soft law standards discussed above and the Directive, that initiating a SLAPP and, in connection therewith, making false statements about a party against whom a SLAPP has been initiated violates proper social conduct. For that reason, too, Energy Transfer is acting tortiously against GPI. In any case, GPI emphasizes the clear consensus within the EU and the Council of Europe that SLAPPs, and especially SLAPPs in countries outside the EU or Council of Europe, are a great danger to freedom of expression and thus democracy. The Member States must therefore do their utmost to protect parties within their jurisdiction against

⁵⁰ Indeed, Article 4(1) of the Rome II Regulation states, "Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur." See also Supreme Court, June 3, 2016, ECLI:NL:HR:2016:1054 (*Dahabshill*),

⁵¹ According to established case law, these legal duties also find application in relationships between private parties through the doctrine of the horizontal effect of fundamental rights.

them. GPI is convinced that this also implies that existing laws and regulations should be interpreted in such a way that victims of SLAPPs receive maximum protection and are able to claim this protection in court in the simplest way possible (see also recital 32 of the Directive, cited above).

153. GPI further believes that the applicable standards of Dutch law can be read in direct correlation with the relevant provisions of the Directive, as the Dutch government also explicitly confirms. In any event, to the extent that your Court would rule otherwise, the law applicable in this case as set forth above should be interpreted in conformity with the Directive.
154. Energy Transfer's conduct which, in consideration of the foregoing, can be characterized as tortious against GPI, and against which GPI seeks your Court's protection in the present case, can be characterized as follows:
 - (i) GPI is an Amsterdam-based NGO working in the public interest and in that context exercised its freedom of expression to express legitimate criticism of Energy Transfer. As a result, Energy Transfer has twice drawn it into protracted and complex civil proceedings in the United States (a third country within the meaning of the Directive). This brings the case within the scope of the Directive (Article 1 and 2 Directive) and involves a "cross-border" element, thus also establishing that the handling of this case is more complex and costly for GPI (Recital 43 Directive);
 - (ii) An unusual circumstance in this case is that it is clear from Energy Transfer's own statements that Energy Transfer's purpose in bringing the Lawsuits is to punish the Greenpeace network for its (very limited) involvement in the protests against DAPL. In doing so, Energy Transfer wishes to send a message, not only to the Greenpeace network but to all groups working to advance the public interest, as it has said: the proceedings are meant "to send a message, you can't do this (...) and it's not going to be tolerated in the United States." Limiting the space for, and participation in, public debate in a pluralistic democracy is not a legitimate goal of litigation. Thus, Energy Transfer, insofar as relevant, is also not entitled to (successful) reliance on Article 6 ECHR or a comparable constitutional provision. See in more detail under (v).
 - (iii) It has been explained in detail above that the Lawsuits are manifestly unfounded. GPI points out that for the provisions of the Directive to apply, it is sufficient that a lawsuit qualifies as an abusive court proceeding or is manifestly unfounded (Article 1 Directive). GPI believes that the Lawsuits fall under both categories. Incidentally, the only issue relevant to the consideration of this case is that the claims in the Lawsuits against GPI are unfounded. GPI believes that this is equally true of the claims against the other Defendants, but that is not relevant to the consideration of the present case. In this regard, it is also relevant that Energy Transfer ought to withdraw the State Lawsuit against GPI from the perspective of mitigating damages, but has willfully refused to do so.
 - (iv) There is an obvious "imbalance of power" between GPI and Energy Transfer (Article 4(3) Directive). Energy Transfer is a huge company that generated nearly USD 80 billion in revenue in 2023.⁵² Kelcy Warren is also a prominent donor to President Donald Trump: he gave nearly USD 6 million to Trump's re-election campaign in

⁵² Wall Street Journal Markets, Energy Transfer LP, cf:
<https://www.wsj.com/market-data/quotes/ET/financials/annual/income-statement>.

2024.⁵³ This gives Energy Transfer a degree of financial and political power incomparable to that of GPI.

- (v) Further application of the Directive's indicators of "abusive court proceedings" also suggests that the Lawsuits qualify as SLAPPs. For example, both cases involve disproportionate, excessive and unreasonable demands (Article 4(3)(a) Directive). The chosen bases are manifestly unfounded, and incompatible with the First Amendment of the U.S. Constitution, and the hundreds of millions of dollars in damage claims are clearly excessive. The Directive explicitly mentions "the excessive dispute value" as a key indicator of a SLAPP, in line with the settled case law of the ECtHR and the authoritative comments of Commissioner Dunja Mijatović ("demands for damages are often exaggerated") and Special Rapporteur Annalisa Ciampi ("they generally include exorbitant claims for damages"). See also recital 43 of the Directive: "SLAPPs in third- countries may involve excessive damages being awarded against persons engaged in public participation."
- (vi) A further indication that the Lawsuits qualify as SLAPPs is that Energy Transfer chose to almost immediately file the State Lawsuit against GPI even after the federal law-based claims in the Federal Lawsuit were dismissed as manifestly unfounded. Thus, this is an instance of different proceedings on the same subject matter (Article 4(3)(b) Directive) and bad faith use of procedural tactics (Article 4(3)(d) Directive). What is important here - to the extent Energy Transfer would argue that this was its right - is that Energy Transfer presented allegations that were substantially the same in the State Lawsuit as the ones the federal court had given short shrift to when packaged as a RICO claim.
- (vii) Also noteworthy in this context is that Energy Transfer chose, each time, to file the Lawsuits against GPI in North Dakota. GPI co-signed a letter, which is insufficient reason to drag it before two different courts in North Dakota. This is all the more true since there are no anti-SLAPP laws in North Dakota. Thus, this conduct by Energy Transfer towards GPI can be qualified as a form of "abusive forum shopping" (Article 4(3)(d) of the Directive).
- (viii) As a result of the Lawsuits, GPI has been forced to incur high costs including legal fees. The cost element also plays a role in the qualification of cases as SLAPPs; see, for example, recital 43 of the Directive. A factor here is that Energy Transfer (unsuccessfully) raised many procedural hurdles, including to prevent discovery of documents on its side and to shield Kelcy Warren from being heard as a deponent. This led to very significant additional costs for GPI.
- (ix) The Lawsuits involve the public disparaging of GPI without justification (as the Special Rapporteur puts it: publication of "allegations designed to smear, harass and overwhelm the campaigners"), which is also an indicator of an "abusive court case" (Article 4(3)(c) of the Directive). The Recommendation of the Committee of Ministers mentions as a possible characteristic of SLAPP in this context: "the legal action is accompanied by a public relations offensive designed to bully, discredit or intimidate actors participating in public debate or aimed at diverting attention from the substantial issue at stake."
- (x) The public disparaging of GPI results in damage to GPI's reputation: there is a consensus in the EU and Council of Europe that this may be an aim and/or

⁵³ The Guardian October 18, 2024, "Trump gets record donations from big oil but far less than \$1bn he wanted," <https://www.theguardian.com/us-news/2024/oct/18/election-trump-oil-gas-fundraising>.

consequence of SLAPPs. In any event, it is also part of Energy Transfer's tortious conduct towards GPI. As explained in detail above, in the SLAPPs it filed against GPI, and in media statements and online expressions surrounding these SLAPPs, Energy Transfer has for years continuously accused GPI of committing serious criminal offenses and all kinds of serious wrongful acts. These expressions - which continue to this day - are false, as explained above, and obviously harmful to GPI.

- (xi) In the State Lawsuit, Energy Transfer at a later stage dropped significant parts of its claims, including claims that had wrongly been brought against a former GP Inc. employee, allegations relating to the Mariner East and Bayou Bridge pipelines, and allegations concerning allegedly defamatory statements about insufficient consultation with the Standing Rock Sioux Tribe, as well as statements about inadequate environmental review of DAPL. The "discontinuation of cases at a later stage" is also an indicator of a SLAPP (Article 4(3)(d) of the Directive)
 - (xii) Finally, the Recommendation of the Committee of Ministers lists as indicative of conduct qualifying as a SLAPP, "the claimant or their representatives engage in legal intimidation, harassment or threats, or have a history of doing so." In that context, it is worth noting that Kelcy Warren previously filed a lawsuit against the then-Democratic gubernatorial candidate Beto O'Rourke, and litigated it all the way to the Texas Supreme Court. O'Rourke had criticized the fact that Energy Transfer had raised its rates during a winter storm in Texas, making an additional USD 2.4 billion in profits, after which Kelcy Warren donated USD 1 million to Governor Greg Abbott's re-election campaign. O'Rourke deemed this "pretty close to a bribe" for the purpose of preventing the taking of action against Energy Transfer. A Texas appeals court rejected the claims outright, citing freedom of expression and the state's anti-SLAPP statute. The Texas Supreme Court declined to hear the case.⁵⁴
155. All in all, both the Federal Lawsuit and the State Lawsuit are textbook examples of tortious SLAPPs, both individually and when viewed together. If the Lawsuits were not to qualify as SLAPPs, GPI believes that no case will reasonably do so. Therefore, the filing of the Lawsuits, the continuation of the State Lawsuit, and Energy Transfer's continued conduct in the context of the SLAPPs (including continuously making false statements about GPI) is plainly tortious against GPI.
156. Given that Energy Transfer filed the Lawsuits and otherwise behaved as described above, the tortious conduct is attributable to it. As GPI will explain in more detail below (Section 7), it has suffered and continues to suffer significant damages as a result. Those damages are proximately caused by Energy Transfer's tortious conduct: without the filing of the Lawsuits and Energy Transfer's other actions, GPI would not have suffered any damages. The standards relied upon by GPI (including the anti-SLAPP laws and regulations) explicitly seek to protect against the type of damages suffered by GPI. Thus, all the requirements of Article 6:162 of the Dutch Civil Code have been met.
157. Moreover, on the same factual grounds as mentioned above, Energy Transfer has abused its rights vis-à-vis GPI pursuant to Article 3:13 of the Dutch Civil Code. Energy Transfer's claims are manifestly unfounded, as explained above, as a result of which, in view of their evident lack of foundation, the filing of the claim should have been decided against in consideration

⁵⁴ DW Magazine December 15, 2023, "Texas Supreme Court Declines to Review Kelcy Warren's Defamation Suit Against Beto O'Rourke," see: <https://www.dmagazine.com/frontburner/2023/12/texas-supreme-court-declines-to-review-kelcy-warrens-defamation-suit-against-beto-orourke/>.

of GPI's interests involved.⁵⁵ This is evident from all the facts and circumstances outlined above: GPI will not enumerate them again to avoid repetition.

158. However, in particular, GPI points to the choice to file and continue to file the State Lawsuit even against GPI after the RICO Act causes of action in the Federal Lawsuit were found to be obviously without merit, and to the public statements by Energy Transfer and its representatives that clearly indicate exercise of the right to access court for no other purpose than to harm GPI.

7 GPI'S DAMAGES

159. As a result of Energy Transfer's tortious conduct, GPI has suffered damages. GPI notified Energy Transfer of its liability by letter dated July 23, 2024. Energy Transfer has expressly refused to mitigate these damages as requested by GPI, and as a result the damages continue to increase every day.

160. Pursuant to Article 17 (1) of the Directive, these damages, including the costs incurred by GPI, are eligible for compensation. In these proceedings GPI claims compensation for damages, to be assessed by the court pursuant to Article 612 of the Code of Civil Procedure. For referral to the damages assessment procedure, it is sufficient for GPI to make a plausible showing it has suffered damages.⁵⁶

161. In support of this, GPI's heads of damages will be explained below, by which GPI fulfils its obligation to assert them.⁵⁷ It is important to note here that the extent of these claims for damages has not yet been determined at this time, given that the State Lawsuit is in any event still in progress.

162. The damages consist of material and immaterial damages. The immaterial damages are in any case damage to reputation (Article 6:106 sub b of the Civil Code). There is also a special category of immaterial damages, namely damage resulting from the deliberate hindrance of a legal entity with a public interest purpose. Section 6:106(a) of the Dutch Civil Code makes it possible to claim compensation for immaterial damages if they were inflicted with "the intention of causing such damage". According to the government's explanation of this article:⁵⁸

"One can also think of intentionally obstructing a legal entity with a public benefit purpose in its achievement, a case that will not always be covered by the provision under b."

163. The main heads of damage in this regard can be described at this time as follows:

- a. As a result of the SLAPPs filed against it, GPI has had to incur very significant costs for legal representation in the United States over many years, first for the defense of the Federal Lawsuit and then for the defense of the State Lawsuit. The cost of defending the State Lawsuit is still rising every day and will reach a new peak beginning in late February 2025, when the five-week jury trial of the State Lawsuit is expected to begin. The total amount of these costs is not yet fixed and will also depend to a significant degree on the further course of the litigation. These costs are expected to be capable

⁵⁵ Supreme Court, 6 April 2012, ECLI:NL:HR:2012:BV7828, NJ 2012/233 (*Duka/Achmea*), Supreme Court, 15 September 2017, ECLI:NL:HR:2017:2366 (*Alternative Construction and Development Combination Wateringsveld B.V. v. Defendants*).

⁵⁶ T&C Article 612 of the Code of Civil Procedure.

⁵⁷ *Id.*

⁵⁸ MoA II, Parliamentary History Civil Code Book 6, p. 380.

of determination in more detail in the follow-up proceedings for the determination of damages.

- b. The handling of Energy Transfer's SLAPPs has cost numerous GPI employees large amounts of time over years, which they are unable to devote to GPI's core mission (campaigning for a green and peaceful future). Again, the time investment of GPI employees continues to increase every day, and the total amount of this damage will depend greatly on the course of the procedure in the State Lawsuit.
 - c. In addition to investing time and (salary) costs, GPI is also forced to invest significant amounts of money in other costs associated with the long-running SLAPP cases. For example, GPI staff must regularly travel to the United States for procedural steps, which involves significant travel and lodging costs; consultations must take place with outside attorneys, and attention must be given to campaign activities associated with the case. Various aspects of the case also require the engagement of knowledgeable outside experts. The conduct of the present case also involves costs for GPI.
 - d. In a general sense, GPI's work is obstructed and held up by the Lawsuits, in many ways. For example, a disproportionate amount of attention has had to be given to GPI's work in the United States arising from the handling of (currently) the State Lawsuit, leaving less room for the fulfilment of GPI's objectives in other parts of the world. Also, the Lawsuits and all developments around them require continuous consultation between GPI, GP, Inc. and Greenpeace Fund, Inc.; after all, these are each independent entities with their own boards and powers. GPI can elaborate on this point if desired, but hopes that this provides some insight for your Court into how Energy Transfer's conduct has (knowingly) frustrated and continues to frustrate GPI's work. From this follow in particular the immaterial damages under Article 6:106 sub a of the Dutch Civil Code.
 - e. The SLAPPs that Energy Transfer has filed against GPI and the serious, unsubstantiated allegations that Energy Transfer has made about GPI result in continued reputational damage on the part of GPI.
164. Thus, there are several categories of damages, including in any case pecuniary damage, damage due to the deliberate obstruction of GPI, and reputational damage. According to the wording of Article 17(1) of the Directive ("the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third-country") these are all eligible for compensation. GPI reserves the right to claim additional heads of damage and/or items of damage, as it is quite possible that, due to the ongoing dynamics of the State Lawsuit, other categories of damage and/or items of damage than those set out above will also arise.
165. As the Defendants each play a largely equal role in the conduct outlined above and have continuously presented themselves as one front in this matter, including in communications, they are jointly and severally liable for the damages suffered by GPI. GPI therefore seeks a joint and several order to pay damages. This is already justified on the grounds that the defendants are (or were) each plaintiffs in the Federal Lawsuit and the State Lawsuit.⁵⁹ They relied in part on different causes of action in these cases, but in each case these were obviously unsubstantiated, and resulted in a disproportionate claim for damages. Therefore,

⁵⁹ GPI again notes that in the Federal Lawsuit, Dakota Access LLC was not a plaintiff, but Energy Transfer Partners, L.P. (the legal predecessor of Energy Transfer Operating, L.P.) as a majority shareholder of Dakota Access was. This is explained by the plaintiffs in the Federal Lawsuit in their First Amended Complaint, see Exhibit 10, par. 25.

the core of the tortious conduct (the joint instigation of SLAPPs and the defendants' conduct in that context) that GPI accuses defendants is identical for each defendant.

166. Energy Transfer's tortious and injurious actions against GPI are all the more objectionable given that Energy Transfer, as stated above, has expressly refused to cease its injurious actions and has indicated that it will pursue the State Lawsuit against GPI to its full extent. This, of course, does not diminish Energy Transfer's continuing obligation to act to mitigate damages, which it can easily do by, at a minimum, withdrawing the State Lawsuit, acknowledging without reservation liability for its tortious actions, and engaging in negotiations to further resolve the matter with GPI.
167. It follows from the above-described finding of tortious conduct and violation of various fundamental rights, and from the substantial damage suffered by GPI as a result, that the damage is attributable to Energy Transfer. The extent of these damages and any other issues surrounding them will be the subject of discussion in the follow-up proceedings for the determination of damages.

8 EXPLANATION OF THE DEMANDS

168. Under I(a), GPI seeks a declaratory judgment that Energy Transfer acted tortiously by bringing the Lawsuits against GPI and, in this connection, making false allegations about GPI. This formulation reflects that, as explained above, Energy Transfer's entire conduct, the bringing of SLAPPs against GPI and everything surrounding it, qualifies as a specific form of tortious conduct against GPI.
169. In addition, under I(b), GPI seeks a declaratory judgment that Energy Transfer abused its rights, specifically by commencing the Lawsuits, pursuant to Article 3:13 of the Dutch Civil Code and that these suits qualify as SLAPPs within the meaning of the Directive, *or in the alternative as* 'manifestly unfounded and abusive court proceedings' within the meaning of the Directive. In the event your Court wishes to stay close to the text of the Directive in the declaratory judgment it awards, in the alternative claim under I(b), the term "SLAPPs" has been replaced by the exact definition thereof from the Directive.
170. GPI has a compelling interest in the granting of these declaratory judgments, as it can thereby objectively demonstrate that an independent court has characterized Energy Transfer's conduct as tortious and an abuse of rights, constituting SLAPPs. Such a ruling, both in this case and in any future cases, will provide a powerful means of redress for victims of SLAPPs and involves a more meaningful judgment than a mere award of damages.
171. Under II, GPI seeks compensation for its damages and referral to follow-up proceedings for the determination of damages. As noted above, GPI does not have a sufficiently complete picture of its total damages at this time: they are increasing every day.
172. Under III, GPI claims publication by Energy Transfer of a notice on its website with a link to a pdf version of a sworn English translation (to be prepared at Energy Transfer's expense) of the judgment to be rendered in this case, as further specified in the prayer for relief. Article 3:296 and/or Article 6:162 and Article 6:103 of the Civil Code provide a sufficient basis in Dutch law for imposing such an obligation,⁶⁰ certainly read in conjunction with Article 15 of the Directive, which provides:

⁶⁰ See in this connection also the government's explanation of Article 3:3035a paragraph 4 of the Civil Code: "(...) it may be assumed that publication of a judgment is also possible outside the cases covered by these articles. If the relevant requirements are met, an order to publish a judgment can thereby be based on article 296 of Book

"Member States shall ensure that courts or tribunals seised of abusive court proceedings against public participation may impose effective, proportionate and dissuasive penalties or other equally effective appropriate measures, including the payment of compensation for damage or the publication of the court decision, where provided for in national law, on the party who brought those proceedings."

and Recital 42 of the Directive:

"The main objective of giving courts or tribunals the possibility of imposing penalties or other equally effective appropriate measures is to deter potential claimants from initiating abusive court proceedings against public participation. Other appropriate measures, including the payment of compensation for damage or the publication of the court decision, where provided for in national law, should be as effective as penalties."

173. GPI considers a period of two weeks for complying with this claim reasonable. To prevent Energy Transfer from removing the mandatory publication from its website after the expiry of some time, GPI seeks an order that Energy Transfer should keep the publication online at the place on its website where its archive of press releases can be found.
174. Under IV, as an incentive to comply with the publication sought under III, GPI seeks payment of a penalty of EUR 10,000 per day that Energy Transfer would not, or not fully, comply with the order to be pronounced under III, on the basis of Article 611a of the Code of Civil Procedure. The amount of this penalty payment has been partly determined in light of the financial strength of Energy Transfer, a company with an annual turnover of almost \$80 billion: the incentive to comply must be effective. In this light, GPI also points out that Energy Transfer must by now have spent tens of millions of dollars on pursuing the Lawsuits: it is thus a very financially strong party where the imposition of a high penalty is justified.
175. Finally, pursuant to Articles 14 and 17(1) of the Directive, GPI's full legal costs in this case are eligible for award (claim under V). Dutch civil procedural law already provides for this possibility pursuant to Article 237 paragraph 1 of the Code of Civil Procedure and Article 3:13 and 3:15 of the Civil Code, as explained by the government in the draft Explanatory Memorandum to the draft Implementation Act (Exhibit 33, p. 11 and 24) and (also) invoked by GPI in the present case:

"Under Article 14 of the Directive, a SLAPP target should be able to be compensated for the full costs of legal representation unless those costs are excessive. Dutch (procedural) law provides for this. In principle, in the Netherlands, the losing party is ordered to pay the costs (Article 237(1) Rv). The court can also leave the costs that were unnecessarily incurred or caused to be incurred for the account of the party that incurred or caused these costs. In SLAPPs, this offers sufficient room to deviate from the scoring system - which in principle applies to the calculation of costs - to come to a full award of costs. In practice, little use is made of this possibility of deviation, but precisely in cases of a manifestly unfounded claims or abuse of procedural law, unnecessary costs will often be involved, so that it is expected that (more) use can be made of this possibility, also in the light of the Directive."

176. GPI realizes that the awarding of full legal costs is unusual in the Dutch legal sphere and that Article 14 of the Directive relates primarily to cases in which the targets of a SLAPP are the

3 of the Civil Code, or on article 162 in conjunction with article 103 of Book 6 of the Civil Code". *Parliamentary Papers II* 1999-2000, 26 693, no. 6, p. 2.

defendants. At the same time, it appears from Article 14 and Article 17 of the Directive, read together and in the context of the intention of the Directive (as is also clear from recital 31), that a claim for the award of full legal costs may also be made in cases where parties invoke the provisions of Article 17(1) of the Directive. In this regard, GPI points out that the costs it had to incur for these proceedings clearly qualify as "costs incurred in connection with the proceedings before the court or tribunal of the third-country." Otherwise, the threshold for claiming the rights described in Article 17(1) Directive would become disproportionately high. In the event that your Court does not go along with this, GPI *alternatively* claims compensation of its legal costs in the usual manner.

177. The total amount of legal costs (including attorney's fees) in this case has not yet been determined. Prior to the hearing in this case, GPI will submit an overview of the legal costs incurred by it up to that point, including an estimate of the legal costs to be incurred up to judgment.

9 KNOWN DEFENSES OF ENERGY TRANSFER

178. Energy Transfer takes the position that the lawsuits it brought against GPI are not SLAPPs, but a legitimate exercise of its rights under North Dakota state law. Energy Transfer further believes that there is no legal basis to establish its liability under either European or Dutch law.
179. These views have been discussed and refuted in the foregoing.

10 EVIDENCE

180. The Plaintiff, to the extent the burden of proof would fall on it under Section 150 of the Code of Civil Procedure, offers proof of all its contentions, by all means in law. Several of GPI's employees involved in the Lawsuits could explain in greater detail the course of the proceedings and content of the Lawsuits, and GPI offers further evidence through submission of relevant procedural documents in the Lawsuits (to the extent permissible under applicable rules of U.S. law).
181. GPI believes it is abundantly clear that the Federal Lawsuit and the State Lawsuit, judged both separately and in conjunction, qualify as SLAPPs within the meaning of the Directive. Therefore, GPI has explained the main features of these cases in this summons, which it believes is sufficient for a thorough assessment of the case before the court. However, should it be necessary, GPI can provide further evidence on the Federal Lawsuit and/or the State Lawsuit by separate writ or by hearing as a witness one of its employees involved in the case

11 PRAYER FOR RELIEF

The plaintiff requests the District Court of Amsterdam to, by judgment, to the extent possible provisionally enforceable:

- I. declare that:
- a. Energy Transfer's conduct toward GPI, including bringing the Federal Lawsuit and the State Lawsuit and making false statements about GPI, is tortious towards GPI; and
 - b. Energy Transfer, by bringing the Federal Lawsuit and the State Lawsuit committed an abuse of rights under Article 3:13 of the Civil Code, and that these lawsuits

qualify as SLAPPs within the meaning of the Directive, *or at least* as "manifestly unfounded and abusive court proceedings" within the meaning of the Directive;

- II. order the defendants jointly and severally to compensate GPI for the damages suffered as a result of their tortious conduct toward GPI, to be assessed by the court and settled according to the law, all to be increased by the statutory interest, and to refer the parties to the follow-up proceedings for the determination of damages for this purpose;
- III. order the defendants, within two weeks of service of the judgment to be entered in this case:
 - a. to have a certified English translation of the judgment to be rendered in this case prepared and published in pdf format as specified below, at their own expense;
 - b. to publish and keep published the following text as a press release on Energy Transfer's website <energytransfer.com>, and to publish and keep published this text on Energy Transfer's "Newsroom" page <https://www.energytransfer.com/newsroom/>, hyperlinking in each case to the certified English translation of the judgment to be rendered in this case as referred to in III (a) of this prayer for relief:

"The Court of Amsterdam, the Netherlands has found, by judgment of [date judgment], that Energy Transfer, LP, Energy Transfer Operating LP and Dakota Access, LLC ("Energy Transfer") have acted tortiously against Greenpeace International by filing two lawsuits against Greenpeace International before the Federal and State Court of North Dakota and publicly accusing Greenpeace International, without any factual basis, of serious criminal and unlawful activities in the context of protests against the Dakota Access Pipeline.

Furthermore, the Court of Amsterdam found that the lawsuits Energy Transfer filed against Greenpeace International qualify as so-called "Strategic Lawsuits Against Public Proceedings" or "SLAPPs" and has ordered Energy Transfer to publish and keep published a sworn translation of its judgment on the website <energytransfer.com>. You can access this document by clicking here."

where this last word "here" in the text included above contains a hyperlink to a pdf version of the certified English translation of the judgment in this case.

- IV. order the defendants jointly and severally to pay a penalty of EUR 10,000 for each day that they do not, or do not fully, comply with the order to be issued under III;
- V. order the defendants jointly and severally to pay the full costs of these proceedings, including post-judgment costs, with the stipulation that if these costs are not paid within fourteen days of the date on which the judgment was rendered, legal interest will be due on them, *or in the alternative*, order the defendants jointly and severally to pay the costs of these proceedings, with the stipulation that if these costs are not paid within fourteen days of the date on which the judgment was rendered, legal interest will be due on them.

Cost of writ: € 144.47

The increase under Article 10 Btag was raised because the plaintiff could not set off the VAT.

This case is being handled on behalf of Stichting Greenpeace Council by *mr.* E.W. Jurjens of Prakken d'Oliveira Human Rights Lawyers, ejurjens@prakkendoliveira.nl , +31 20 344 6200.

EXHIBIT 2

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-

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.)

OPINION DENYING MOTION FOR
ANTI-SUIT INJUNCTION

¶1. The Plaintiffs (Energy Transfer) filed a Motion for Anti-Suit Injunction on July 22, 2025, requesting the Court prohibit Greenpeace International (GPI) from proceeding with a legal action filed in a Dutch court. In the Dutch action GPI seeks damages from Energy Transfer for tortious acts, including the filing of a SLAPP suit in the United States, instituting a federal RICO action and publishing false statements about GPI regarding GPI’s criminal activity and facilitation of acts of terrorism. GPI also insists Energy Transfer cannot enjoin GPI because of a lack of personal jurisdiction in the North Dakota matter. Energy Transfer maintains the Dutch action is vexatious and duplicative of the North Dakota action, claiming the jury decision rendered in this action resolved the matter and allowing GPI to proceed would serve to undermine the result of this action.

¶2. The above matter reached a jury trial in February and March of 2025, resulting in a substantial jury verdict in favor of Energy Transfer and against the Greenpeace Defendants Greenpeace Inc., Greenpeace Fund and GPI. GPI claims, without contest from Energy Transfer, that GPI notified Energy Transfer on July 23, 2024, GPI claimed relief under Dutch and European law, and the Energy Transfer and GPI exchanged correspondence regarding the matter in September through December of 2024. GPI filed its Summons with the Court of Amsterdam, the Netherlands on February 11, 2025. The Morton County, North Dakota jury trial began at the end of February 2025. The jury awarded damages to Energy Transfer (including Dakota Access) on twelve claims, plus exemplary damages. The claims were as follows: 1) Trespass to land; 2) Aiding and abetting trespass to land; 3) Trespass to Chattel; 4) Aiding and abetting trespass to chattel; 5) Conversion; 6) Aiding and abetting conversion; 7) Nuisance; 8) Aiding and abetting nuisance; 9) Conspiracy; 10) Defamation; 11) Defamation *per se*; and 12) Tortious interference. The Greenpeace Defendants raised no counterclaims.

¶3. From a perusal of the Summons in the Dutch action, which seems to combine the Summons and Complaint seen in the courts of North Dakota, GPI apparently claims the North Dakota action filed by Energy Transfer qualified as a “SLAPP” suit – Strategic Litigation Against Public Participation, a cause of action recognized in the Netherlands under anti-SLAPP suit law. Additionally, as mentioned above, GPI appears to claim Energy Transfer defamed GPI by filing a RICO suit in the federal court, which was dismissed, and claiming GPI engaged in criminal activity and facilitation of terrorism.

¶4. . In reviewing the cases cited by Energy Transfer and GPI, the Court failed to find much discussion about the four requirements for a preliminary injunction. BAE discussed the four requirements: 1- the movant must show a likelihood of success on the merits; 2 – there must

exist a potential for irreparable harm without preliminary relief; 3 – a balancing of the equities must favor the movant; and 4 – granting the preliminary injunction would be in the public interest. Neither Energy Transfer or GPI spent much, if any, time on discussing these four requirements in depth, probably because of the unique factors involved with an anti-suit injunction against another country, rather than a sister state.

¶5. The anti-suit injunction combines elements of a preliminary judgment with special consideration because a court in the forum state (here, North Dakota) issues a ruling with a direct impact on the foreign court (the Dutch Court). Energy Transfer cited BAE Systems Technology Solutions & Services, Inc. v. Republic of Korea's Defense Acquisition Program Administration, 195 F. Supp 3d 776 (D. Md. 2016) which contains an extensive discussion of the various factors to be considered:

The suitability of an anti-suit injunction involves different considerations from the suitability of other preliminary injunctions. An anti-suit injunction, by its nature, will involve detailed analysis of international comity. Often . . . the injunction will be defensive in nature. * * * The parties agree that other circuits have taken two different approaches, which Plaintiff refers to as the “liberal” standard, which favors granting an injunction, and the “conservative” standard, which favors simultaneous litigation in the two fora. * * * [T]he District of South Carolina has observed that a third approach exists, under which “ [t]he equitable circumstances surrounding each request for an injunction must be carefully examined to determine whether . . . the injunction is required to prevent an irreparable miscarriage of justice.” * * *.

Analysis of the propriety of a foreign anti-suit injunction is a three-step process under either of the approaches. First, the court resolves the threshold considerations of whether the parties and issues are the same. Second, the court considers four factors to determine the effect the foreign suit would have if it were to continue. Third, the court considers principles of comity.* * *.

The anti-suit injunctions factors are similar under both approaches. Preliminarily, the court considers whether “(1) ‘the parties are the same in both [the foreign and domestic lawsuits],’ ” and whether “(2) ‘resolution of the case before the enjoining court is dispositive of the action to be enjoined.’ ” * * * Courts taking both liberal and conservative approaches have considered substantial similarity, instead of

looking only for whether the parties and claims were identical or whether the case in the enjoining court is dispositive of the other case. * * *.

If the answer to these preliminary inquiries is “yes,” the court assesses the effect of the foreign suit, if it were to proceed. The Courts of Appeals that have discussed this assessment agree that the court should consider the following four factors: “whether the parallel litigation would ‘(1) frustrate a policy in the enjoining forum; (2) be vexatious; (3) threaten the issuing court’s *in rem* or *quasi in rem* jurisdiction; [or] (4) prejudice other equitable considerations’ * * * The Second Circuit also considers a fifth factor—whether allowing the foreign suit to proceed would ‘result in delay, inconvenience, expense, inconsistency, or a race to judgment.’ * * *.

If the preliminary and secondary factors are satisfied, the court must consider principles of comity. * * *

The parties agree that the main difference in the approaches is that the conservative approach “accords greater weight to comity concerns.” Pl.’s Mem. 13; *see* Defs.’ Opp’n 14 n.10. Under the liberal approach, the standard does not “exclude[] the consideration of principles of comity,” but it also does not “require a district court to genuflect before a vague and omnipotent notion of comity every time that it must decide whether to enjoin a foreign action.

The “strict” (or conservative) cases favoring simultaneous litigation “presume a threat to international comity whenever an injunction is sought against litigation in a foreign court.” In contrast, the “lax” (or liberal) cases favoring injunctions, while not “deny[ing] that comity could be impaired by such an injunction[,] ... demand evidence (in a loose sense—it needn’t be evidence admissible under the Federal Rules of Evidence) that comity is likely to be impaired” by an injunction. The evidence needed is “some indication” from the opponent that “the issuance of an injunction really would throw a monkey wrench, however small, into the foreign relations of the United States.”

Additionally, under the liberal approach favoring injunctions, the plaintiff “need not meet [the] usual test of a likelihood of success on the merits of the underlying claim to obtain an antisuit injunction against [the defendant] to halt the [foreign] proceedings,” but rather “need only demonstrate that the factors specific to an anti-suit injunction weigh in favor of granting the injunction.” (“Although both the district court and the parties discussed all four prerequisites to the issuance of a traditional preliminary injunction, the suitability of [a foreign anti-suit injunction] ultimately depends on considerations unique to antisuit injunctions.”). In contrast, at least one circuit employing the conservative approach favoring simultaneous proceedings has held that “[a] preliminary anti-suit injunction may be entered only if the multi-factor test [specific to antisuit injunctions] and the ordinary test for a preliminary injunction are both satisfied.” In an abundance of caution, I will address the standard preliminary injunction factors as well, although it seems to me that the

better-reasoned approach is that the factors unique to whether to grant a preliminary foreign anti-suit injunction are sufficient in and of themselves.

At 784-790.

¶6. The Court considered the threshold considerations: 1 – Are the parties and issues the same?, 2 – Would the parallel litigation a) frustrate a policy in the enjoining forum; b) be vexatious; c) threaten the issuing court's *in rem* or *quasi in rem* jurisdiction; or d) prejudice other equitable considerations?, and 3 – Do the principles of comity affect the consideration?

¶7. Clearly both Energy Transfer and GPI are parties in both the North Dakota case and the Dutch case. All of the contention between the parties arises from the same activities – the establishment of the Dakota Access Pipeline (DAPL) in the area south and west of Bismarck-Mandan, which expanded into a national and international campaign by opponents of DAPL. To the extent Energy Transfer claims damages from the activities involved with the protests and the campaign, (the North Dakota action) and the Greenpeace Defendants assert their involvement in any of the protests and the campaigns were protected under freedom of expression and the North Dakota action was brought as a SLAPP, both actions are based on the protests and campaign. However, as indicated by the recitation of the claims in the respective actions, the issues do not seem to be the same. As noted in GPI's brief, North Dakota does not recognize a SLAPP or anti-SLAPP action, as such. So, as that issue was not raised in North Dakota, but is alleged and recognized in the Netherlands, there is a difference on that issue. Likewise, the North Dakota action did not consider any allegations of defamatory statements directed toward GPI from Energy Transfer. All of the defamatory claims in the North Dakota action addressed those from the Greenpeace Defendants toward Energy Transfer.

¶8. The Court next considered the effect of the litigation in the Netherlands on the North Dakota proceeding. The first of the four factors deals with frustration of a policy in the North Dakota

court. The jury verdict has been reached, and the Court is wading through the post-trial motions, but expects those motions to be addressed prior to September 19, 2025 -the date proffered by Energy Transfer in the oral arguments. Admittedly this Court has no familiarity with the civil procedure in the Netherlands, and therefore no idea how quickly the Dutch court moves on civil matters. However, the Court believes the only manner in which a Dutch action could impact the policy of the North Dakota courts would be to reach a final conclusion prior to this Court's ruling on the motions and the filing of any documents required by the rulings. Energy Transfer posited the Dutch action would result in a blatant disregard for this Court's and the jury's decisions, and while that is a possibility, that is not a certainty.

¶9. The second factor deals with a potential 'vexatious' nature of the Dutch action. GPI's claims certainly are not welcomed by Energy Transfer, any more than the Court would welcome those claims being lodged before this Court after the marathon all the parties and the Court ran in the North Dakota matter. Rule 58(2)(b), N.D. Sup. Ct. Admin. R., defines "vexatious litigant" as "a person who habitually, persistently, and without reasonable grounds engages in conduct" that:

- (1) serves primarily to harass or maliciously injure another party in litigation;
- (2) is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law;
- (3) is imposed solely for delay;
- (4) hinders the effective administration of justice;
- (5) imposes an unacceptable burden on judicial personnel and resources; or
- (6) impedes the normal and essential functioning of the judicial process.

Matter of Hirsch, 2017 ND 291, ¶ 5, 904 N.W.2d 740, 742–43.

Because GPI's Dutch claims do not require the parties to relitigate the claims of the North Dakota action, the Court does not find the Dutch action to be vexatious.

¶10. The Dutch action does not appear to threaten the North Dakota courts' *in rem* or *quasi in rem* jurisdiction, as that action appears to be against Energy Transfer for damages, and fails to raise a question about property in North Dakota. The Dutch action fails to prejudice any equitable considerations in the North Dakota action because the matter has proceeded through trial.

¶10. The Court then considered the principles of comity.

Comity is a principle under which a court voluntarily defers action on a matter properly within its jurisdiction until a court in another jurisdiction, with concurrent jurisdiction and who is already cognizant of the litigation, has an opportunity to pass upon the matter. *See Rose v. Lundy*, 455 U.S. 509, 518, 102 S.Ct. 1198, 71 L.Ed.2d 379 (1982). Under the principles of comity, the court that first acquires jurisdiction will retain it. *State ex rel. Paulson v. Meier*, 127 N.W.2d 665, 671 (N.D.1964). Comity is not a right, but is a willingness to grant privilege out of deference and good will. *Hansen v. Scott*, 2004 ND 179, ¶ 8, 687 N.W.2d 247.

State ex rel. Stenehjem v. Simple.net, Inc., 2009 ND 80, ¶ 14, 765 N.W.2d 506, 510.

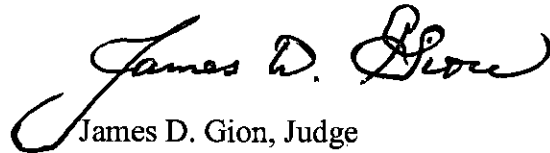
The issue of comity does not apply to GPI's SLAPP claims or GPI's defamation claims, as those matters are not pending before the North Dakota court. Even if the consideration of comity applied, the Court notes the Eighth Circuit has adopted the 'conservative' approach regarding comity which presumes a threat to international comity whenever an injunction is sought against litigation in a foreign court. That conservative approach argues for a denial of the anti-suit injunction.

¶11. Accordingly, the Court denies Energy Transfer's Motion for Anti-Suit Injunction. The Court requests GPI to provide the appropriate order.

¶12. During oral argument, Energy Transfer asked the Court, in the event of an adverse ruling on their Motion, to certify the question to the North Dakota Supreme Court. As the Court understands the procedure, Energy Transfer would have to file a Motion and GPI would be allowed time to respond. From its experience in the first week or so of the trial, the Court is also aware of N.D.App.P. 21 regarding supervisory writs which may address the matter more expeditiously.

Dated this 9th day of September, 2025.

BY THE COURT:

A handwritten signature in black ink, reading "James D. Gion". The signature is written in a cursive style with a large, sweeping initial "J".

James D. Gion, Judge

EXHIBIT 3

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

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,

Plaintiffs,

v.

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.

Case No. 30-2019-CV-00180

SECOND AMENDED COMPLAINT

[¶1] Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P. (together with Energy Transfer LP, “Energy Transfer”), and Dakota Access LLC (“Dakota Access”), for their complaint against Defendants Greenpeace International (aka “Stichting Greenpeace Council”); Greenpeace, Inc.; Greenpeace Fund, Inc. (collectively, the “Greenpeace Defendants”); Red Warrior Society (aka “Red Warrior Camp”); Cody Hall; and Krystal Two Bulls, allege as follows:

INTRODUCTION

[¶2] This action arises from Defendants’ unlawful and violent scheme to cause financial harm to Energy Transfer and Dakota Access, to cause physical harm to their employees and infrastructure, and to disrupt and prevent the companies’ construction of the Dakota Access Pipeline (“DAPL”) -- a 1,172-mile long underground crude oil pipeline which extends from the Bakken region of North Dakota to Patoka, Illinois. 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. All the while, Defendants utilized the anti-DAPL platform to raise tens of millions of dollars in donations from the public under the guise of concern over indigenous peoples' rights.

[¶3] The conduct and harm alleged here has been described by the U.S. District Court for the District of North Dakota as “mindless and senseless criminal mayhem” that is not protected by the rights of free speech and assembly:

With respect to the assertion the movement has been a peaceful protest, one need only turn on a television set or read any newspaper in North Dakota. There the viewer will find countless videos and photographs of the “peaceful” protestors attaching themselves to construction equipment operated by Dakota Access; vandalizing and defacing construction equipment; trespassing on privately-owned property; obstructing work on the pipeline; and verbally taunting, harassing, and showing disrespect to members of the law enforcement community. . . . The estimated damage to construction equipment and loss of work on the project is far in excess of several million dollars. . . . To suggest that all of the protest activities to date have been “peaceful” and law-abiding defies commonsense and reality.

Dakota Access, LLC v. Archambault, No. 1:16-cv-296, 2016 WL 5107005, at *2 (D.N.D. Sept. 16, 2016).

[¶4] Defendants advanced their extremist agenda -- to attack and disrupt Energy Transfer and Dakota Access's business and their construction of DAPL -- through means far outside the bounds of democratic political action, protest, and peaceful, legally protected expression of dissent. Instead, Defendants pursued “militant direct action” -- in the words of Defendant Two Bulls -- including trespass onto Dakota Access's private property; unlawful invasion of Dakota Access's easements; violent and destructive attacks on Dakota Access's construction equipment and other private property; arson; and intimidation, harassment, and assault of Plaintiffs' employees.

[¶5] Defendants also engaged in large-scale, intentional dissemination of misinformation and outright falsehoods regarding both Energy Transfer and Dakota Access and the companies' extensive efforts to address the concerns of local North Dakota communities about the pipeline, including spreading defamatory falsehoods regarding DAPL's supposed, but actually nonexistent, intrusion on local indigenous peoples' -- the Standing Rock Sioux Tribe's -- historically important burial sites and land; as well as a defamatory campaign to interfere with and, indeed, destroy Energy Transfer and Dakota Access's relationships with investors, financiers, and other constituents.

[¶6] In fact, prior to starting construction on the pipeline, Plaintiffs spent more than two years working closely with the United States Army Corps of Engineers ("USACE"), and North Dakota officials, to identify a route for the pipeline that would have the least impact on local stakeholders and resources. Plaintiffs went to great lengths to engage with all interested stakeholders potentially affected by the pipeline's construction, including the Standing Rock Sioux Tribe ("SRST"). As a result, DAPL almost exclusively tracks private land, does not encroach on SRST land, and entirely avoids disturbance to historic and cultural resources. Accordingly, USACE determined -- with the concurrence of the North Dakota State Historic Preservation Officer -- that the Project *affected no historic properties*.

[¶7] Notwithstanding Defendants' specific knowledge of the foregoing, Defendants' actions and words made clear that their purpose was to inflict as much financial harm as possible on Energy Transfer and Dakota Access, whether or not they could actually prevent construction of the pipeline. In fact, when court decisions and other events confirmed the lawfulness and propriety of DAPL, Defendants stated openly that their efforts were nonetheless justified by the tremendous additional expense and delay they caused to Energy Transfer and Dakota Access.

[¶8] Defendants’ malicious intent -- and their stunning hypocrisy -- were evidenced by, among other things, the fact that their calls for “direct action” incited, led, and financially supported by Defendants left tribal and other lands in an utterly degraded condition -- strewn with rotting garbage, pest-infested firewood, human waste, orphaned animals, abandoned tents and other structures, and over 830 dumpster loads of trash. The Greenpeace Defendants -whose pockets were lined with tens of millions of dollars in anti-DAPL contributions they raised from around the globe -- disappeared, and contributed *not a cent* to restore North Dakota to the condition in which they found it. Instead, the bill for the multi-million dollar cleanup of the “environmental disaster” left by protestors fell largely upon the citizens of North Dakota, American taxpayers, and the Standing Rock Sioux Tribe.

[¶9] As the citizens of North Dakota experienced firsthand, the Defendants, purportedly protesting Energy Transfer, Dakota Access, and DAPL, inflicted other significant harm upon the State of North Dakota and its citizens in addition to the environmental mess they left behind. North Dakota citizens suffered months of harassment, intimidation, and threats from protestors; their property was destroyed; ranchers’ cattle and bison were butchered or maimed; graves were vandalized; and local residents’ private property was vandalized, leaving people feeling unsafe and under siege in their own homes. The State of North Dakota publicly condemned Defendants’ conduct: “[t]he real brutality [was] committed by violent protestors who use[d] improvised explosive devices to attack police, use[d] hacked information to threaten officers and their families, and use[d] weapons to kill livestock, harming farmers and ranchers.”

[¶10] By this action, Energy Transfer and Dakota Access seek to recover the millions of dollars of damages caused by Defendants’ unlawful, malicious, and coordinated attack on Energy Transfer, Dakota Access, and DAPL. 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, as detailed in this complaint, that Plaintiffs seek to vindicate their own legal rights.

PARTIES AND RELEVANT NON-PARTIES

Plaintiffs

[¶11] Plaintiff Energy Transfer LP is a master limited partnership organized under the laws of Delaware and headquartered in Dallas, Texas. Energy Transfer LP was formerly known as Energy Transfer Equity, L.P.

[¶12] Plaintiff Energy Transfer Operating, LP is a master limited partnership organized under the laws of Delaware and headquartered in Dallas, Texas. Energy Transfer Operating, L.P. was formerly known as Energy Transfer Partners, L.P.

[¶13] Energy Transfer owns the largest liquid petroleum and natural gas pipeline system by volume in the United States, spanning nearly 72,000 miles. Energy Transfer was the "project lead" and "primary builder" of DAPL, and the subject and target of numerous false and defamatory statements by the Greenpeace Defendants.

[¶14] Plaintiff Dakota Access is a limited liability company organized under the laws of Delaware with its headquarters and principal place of business in Dallas, Texas. Dakota Access owns and operates DAPL, a project planned, designed, and constructed by Energy Transfer. Dakota Access also owns the easements with which Defendants unlawfully interfered, and owned or was otherwise in possession of the land on which Defendants trespassed at all relevant times. Dakota Access further owns or was otherwise in possession of machinery and construction

equipment, the use of which Defendants wrongfully deprived Dakota Access by damaging, destroying or otherwise detaining such equipment.

The Greenpeace Defendants

[¶15] Defendants Greenpeace International, aka Stichting Greenpeace Council (“GP-International” or “GPI”), Greenpeace, Inc. (“GP-Inc.”), and Greenpeace Fund, Inc. (“GP-Fund”) are each constituents of the international “Greenpeace” organization, a network of legally distinct, yet coordinated, international, national, and regional associations, and are inextricably bound with each other.

[¶16] Defendant GPI is a Dutch not-for-profit foundation based in Amsterdam, the Netherlands. GPI reviews, approves, and underwrites the activities of national and regional “Greenpeace” entities, including GP-Inc. and GP-Fund. GPI also directs the activities of international Greenpeace entities, such as Greenpeace Netherlands and Greenpeace Japan.

[¶17] GP-Inc. is a nonprofit corporation organized under the laws of California and headquartered in Washington, D.C. GP-Inc. is licensed to do business in many states, including North Dakota.

[¶18] GP-Fund is a nonprofit corporation organized under the laws of California and headquartered in Washington, D.C. GP-Fund is licensed to do business in many states, including North Dakota.

[¶19] GP-Inc. and GP-Fund collectively hold themselves out as “Greenpeace USA” and share an executive director, Annie Leonard. Employees of GP-Inc. and GP-Fund are publicly identified as representatives of “Greenpeace USA.” GP-Inc. and GP-Fund publish reports as “Greenpeace USA,” and act together as “Greenpeace USA.” GP-Inc. and GP-Fund have admitted in public filings that they jointly “control all Greenpeace operations in the United States” and

“pursuant to a ‘protocol’ between [] all other Greenpeace entities worldwide, including . . . Greenpeace International, no Greenpeace operations are to occur in the United States without [their] consent.” GPI and Greenpeace USA each purport to be “expert” organizations that publish reports based on “expert analysis and investigations.”

Defendants Red Warrior Society aka Red Warrior Camp, Cody Hall, and Krystal Two Bulls

[¶20] Defendant Cody Hall is a resident of South Dakota. Defendant Hall is a leader, organizer, spokesperson, and fundraiser for Red Warrior Society.

[¶21] Defendant Krystal Two Bulls is a resident of Montana. Defendant Two Bulls serves as a leader, organizer, media coordinator, and fundraiser for Red Warrior Society.

[¶22] Red Warrior Society is an informal organization of the most violent, most radical anti-DAPL activists in North Dakota and across the country. Red Warrior Society is a front organization for Greenpeace USA intended to provide cover for Greenpeace USA’s support of and engagement in illegal, violent “direct action” against DAPL. Defendant Hall formed Red Warrior Camp, the physical incarnation of Red Warrior Society, near the DAPL crossing at Lake Oahe in the fall of 2016 with the financial support and direction of Greenpeace USA and Earth First! in connection with anti-DAPL protests in North Dakota.

[¶23] Red Warrior Society, and its members at Red Warrior Camp, distinguished themselves from other activists by their express rejection of non-violent protest, and embrace of violence and “militant direct action” tactics against DAPL. “Militant direct action,” as the term is used by Red Warrior Society, means the destruction and/or damage of DAPL construction equipment and other property, attacks on and intimidation of Plaintiffs’ employees, and operations specifically designed to damage or destroy DAPL. In the words of Defendant Two Bulls, “Militant direct action is a strategy we use to build real movements, change power dynamics, shift societies

and even remove governments.”

Non-Party Banktrack

[¶24] Banktrack, aka Stichting Banktrack, is a not-for-profit foundation based in Nimegen, the Netherlands. Banktrack coordinated with Greenpeace Defendants to publish and disseminate false statements about Energy Transfer, Dakota Access, and DAPL. Banktrack also coordinated with Greenpeace Defendants to disseminate false statements about Energy Transfer, Dakota Access, and DAPL to Dakota Access’s and Energy Transfer’s respective lenders to induce the termination or impairment of these relationships.

Non-Party Earth First!

[¶25] Earth First!, an unincorporated association, is a radical environmental activist group. In connection with DAPL protests, Earth First! provided \$500,000 to extremist protestors, including Cody Hall and Krystal Two Bulls, to form and fund the violent Red Warrior Camp at DAPL crossing near Lake Oahe; coordinated with Greenpeace USA to provide training in “direct action” and criminal sabotage to Red Warrior Camp; and distributed copies of its Direct Action Manual and Ecodefense Guide -- which provide instruction on “direct action” techniques -- at protest camps in North Dakota and other sites along DAPL’s route.

JURISDICTION AND VENUE

[¶26] This Court has jurisdiction pursuant to N.D. R. Civ. P. 4(b)(2) because each defendant directly and through agents transacts business within the state; committed tortious acts within or outside the state causing injury to another person or property within the state; and/or has committed a tort within the state causing injury to another person or property within or outside the state.

[¶27] Venue is proper in Morton County pursuant to N.D.C.C. § 28-04-05 because Plaintiffs’ causes of action arose in Morton County and the vast majority of the events and conduct

giving rise to this action occurred in this county.

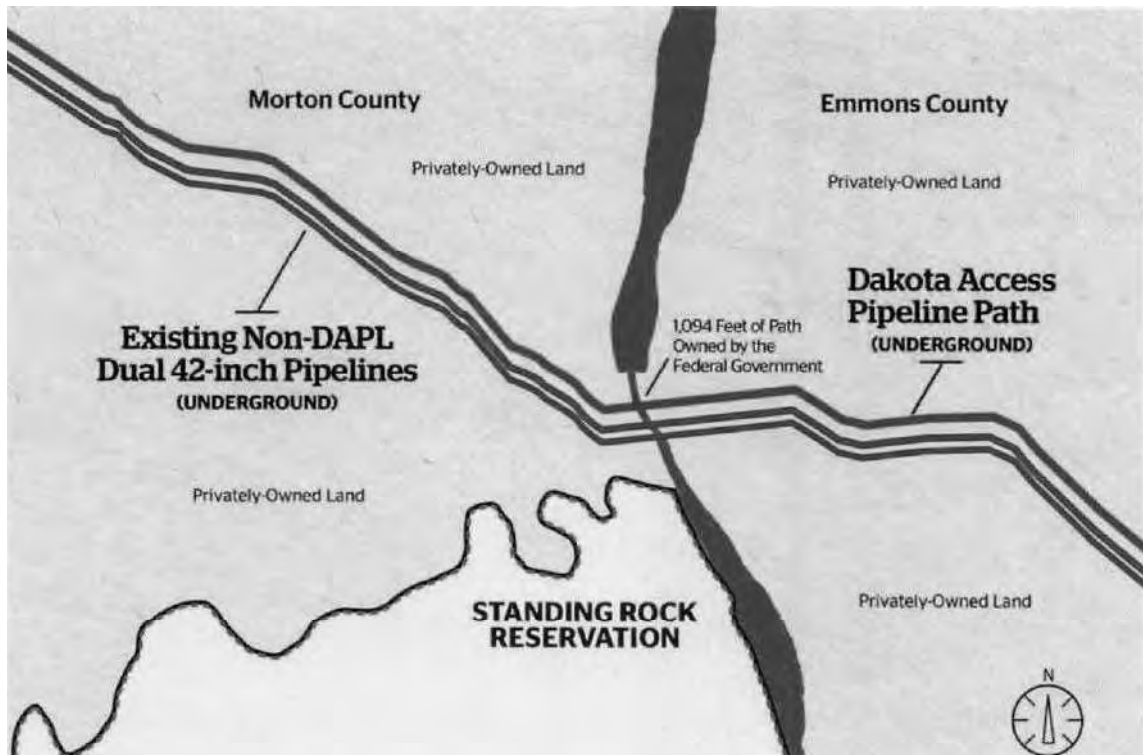
FACTS

A. Energy Transfer and Dakota Access carefully and extensively plan and design DAPL to track privately owned land and minimize environmental impact.

[¶28] On June 25, 2014, Plaintiffs announced the development and construction of DAPL -- a 1,172 mile underground oil pipeline -- to transport nearly a half-million barrels of domestically produced crude oil across four states on a daily basis. Via the pipeline, oil is transported from the Bakken region in North Dakota, across South Dakota and Iowa, to Patoka, Illinois, where it connects to the national and international oil refining and distribution networks.

[¶29] For the next 25 months, Plaintiffs -- working closely with USACE and North Dakota state officials -- conducted extensive planning to identify a route for the pipeline that would have the least impact on community stakeholders and natural and cultural resources.

[¶30] As a result of Plaintiffs' careful planning, DAPL traverses private land for 99% of its route. One exception is where DAPL crosses federally-owned and regulated waters at the Missouri River under the man-made Lake Oahe -- a reservoir that begins just north of Pierre, South Dakota and extends nearly to Bismarck, North Dakota. Lake Oahe is federally owned and regulated, as is the land surrounding it. The Lake Oahe crossing is located a half mile above the northern boundary of the SRST reservation. As shown in the image below, ***DAPL does not cross any SRST-owned land or water.***



[¶31] As depicted in the image below, the pipeline “crosses” 90 to 115 feet beneath Lake Oahe along the route of an existing pipeline -- the Northern Border Pipeline. Plaintiffs selected this crossing location because it would traverse a path that was already disturbed by existing infrastructure, thus reducing the risk of any negative impact to historic resources or cultural features.



[¶32] On July 25, 2016, USACE issued a Final Environmental Assessment for DAPL

with a Mitigated Finding of No Significant Impact, concluding that the risk of spill was very low, and authorizing the pipeline's route under Lake Oahe.

B. Defendants execute an unlawful and violent campaign to cause financial and reputational harm to Energy Transfer and Dakota Access and to obstruct construction of DAPL.

[¶33] No later than July 2016, as DAPL neared completion, the Greenpeace Defendants conspired and agreed with Banktrack, Earth First!, Cody Hall, and Krystal Two Bulls to engage in a coordinated campaign to obstruct Energy Transfer and Dakota Access's construction of DAPL and their business operations and to inflict the maximum amount of financial and reputational harm possible upon Energy Transfer and Dakota Access.

[¶34] Defendants' operations against Energy Transfer and Dakota Access consisted of three components. First, the Greenpeace Defendants and Banktrack disseminated false statements about Energy Transfer, Dakota Access, and DAPL to the public for the purpose of raising funds to further their anti-DAPL agenda, inciting thousands of protestors to descend on Lake Oahe to halt construction of DAPL, and damaging Energy Transfer and Dakota Access's reputation. Second, Greenpeace USA and Earth First! organized, funded, and supported unlawful acts of trespass, property destruction, and violence by protestors (including Hall and Two Bulls) to obstruct construction and operation of DAPL. Third, the Greenpeace Defendants and Banktrack disseminated false statements about Energy Transfer, Dakota Access, and DAPL directly to Energy Transfer and Dakota Access's respective lenders and investors to induce the termination or impairment of these relationships and/or contracts and damage both Energy Transfer's and Dakota Access's reputations. Defendants' defamatory attacks on "DAPL," the "pipeline," "Dakota Access," and "Energy Transfer" were intended to harm both Dakota Access and Energy Transfer. While Dakota Access and Energy Transfer are separate corporate entities, Defendants made no distinctions between Plaintiffs in their defamatory attacks, and used these names and

phrases interchangeably to attack all Plaintiffs.

1. Defendants disseminate malicious false statements about Energy Transfer, Dakota Access, and DAPL in a misinformation campaign.

[¶35] Beginning in (at the latest) August 2016 and continuing through the months of protests at Lake Oahe, the Greenpeace Defendants and Banktrack commenced large-scale dissemination of false claims about the impacts of the development, construction, and operation of DAPL. These misrepresentations were disseminated via, *inter alia*, mass emails sent by these Defendants to their membership, donor, and other email lists, websites operated by these Defendants, press releases, social media accounts, and other means.

[¶36] The Greenpeace Defendants' and Banktrack's specific misrepresentations are set forth in detail in the Second Amended Appendix A to this Second Amended Complaint. Defendants' misrepresentations regarding Energy Transfer, Dakota Access, and DAPL fall into three broad categories: (a) false statements regarding DAPL's path, (b) false statements alleging Energy Transfer "desecrated" cultural resources, (c) false statements regarding Energy Transfer's treatment of anti-DAPL protestors. A number of Defendants' false publications specifically identify Energy Transfer as DAPL's "project lead" and "primary builder," and describe DAPL as "a project of Energy Transfer," thereby defaming Energy Transfer by false statements about the planning, approval, and construction of DAPL.

[¶37] As will be shown at trial, each of Defendants' misrepresentations, individually and collectively, caused substantial harm and damage to both Dakota Access and Energy Transfer.

a. Defendants misrepresented that DAPL traverses SRST lands.

[¶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 SRST land. This is false. ***In fact, the pipeline does not traverse SRST property, at all.*** The Lake Oahe crossing is located a half-mile north of the legal boundary of the SRST reservation. Its waters are federally owned and regulated, as is the 1.4 miles of land beneath Lake Oahe where DAPL passes under the waterway. The land adjacent to Lake Oahe, through which the pipeline traverses, is likewise federally owned. The facts regarding DAPL's specific path have been publicly known since before construction on the pipeline ever commenced. Yet the Greenpeace Defendants and Banktrack repeatedly disseminated this false claim to thousands upon thousands, if not millions, of people, including their constituents and the general public, as part of their effort to raise funds and to incite anti-DAPL protests.

b. Defendants misrepresented that Energy Transfer and Dakota Access desecrated cultural resources.

[¶39] The Greenpeace Defendants and Banktrack also falsely claimed that Energy Transfer "deliberately desecrated documented burial grounds and other culturally important sites" and destroyed sacred Native Lands and religious and other historical sites. Contrary to these claims, the DAPL route was meticulously planned to, and does, avoid historically or culturally important sites. In fact, as the Defendants were well aware, Plaintiffs went to extraordinary lengths to ensure cultural resources were not disturbed or destroyed, including by consulting with SRST prior to construction. Indeed, in April 2016, USACE determined -- with the concurrence of the North Dakota State Historic Preservation Officer -- that the pipeline affected no historic properties.

[¶40] Moreover, findings of the North Dakota State Historical Society, released on September 22, 2016, refute any claim that Energy Transfer or Dakota Access desecrated historical

resources near Lake Oahe. In fact, after conducting its own, independent cultural resource survey of the Lake Oahe corridor and DAPL's impact on the cultural and historical resources, the North Dakota State Historical Society concluded that there was "no evidence of infractions . . . with respect to disturbance of human remains or significant sites" as a result of the DAPL project.

[¶41] On September 9, 2016, the U.S. District Court of the District of Columbia (the "DC Court") in *Standing Rock Sioux Tribe, et al. v. U.S. Army Corps of Engineers*, 16-cv-1534, a lawsuit challenging the adequacy of the consultation and environmental review process for DAPL found that Dakota Access "prominently considered" the "potential presence of historic properties" in choosing a route for the pipeline:

Using past cultural surveys, the company devised DAPL's route to account for and avoid sites that had already been identified as potentially eligible for or listed on the National Register of Historic places. With that path in hand, in July 2014, the company purchased rights to a 400-foot corridor along its preliminary route to conduct extensive new cultural surveys of its own. These surveys eventually covered the entire length of the pipeline in North and South Dakota, and much of Iowa and Illinois. Professionally licensed archaeologists conducted Class II cultural surveys, . . . [and] [i]n some places, . . . intensive Class III cultural surveys....

Where this surveying revealed previously unidentified historic or cultural resources that might be affected, the company mostly chose to reroute. In North Dakota, for example, the cultural surveys found 149 potentially eligible sites, 91 of which had stone features. The pipeline workspace and route was modified to avoid all 91 of these stone features and all but 9 of the other potentially eligible sites. By the time the company finally settled on a construction path, then, the pipeline route had been modified 140 times in North Dakota alone to avoid potential cultural resources. Plans had also been put in place to mitigate any effects on the other 9 sites through coordination with the North Dakota SHPO. All told, the company surveyed nearly twice as many miles in North Dakota as the 357 miles that would eventually be used for the pipeline.

[¶42] The D.C. Court also detailed Dakota Access's efforts to consult with the SRST, noting that, despite "dozens of attempts to engage Standing Rock," the "Tribe largely refused to engage in consultations." Nonetheless, the D.C. Court also concluded that the USACE -- who provided critical oversight of DAPL planning -- independently consulted with the SRST regarding

DAPL's proposed path. In fact, the D.C. Court found that the USACE "exceeded its NHPA obligations" in considering the SRST's concerns:

For example, in response to the Tribe's concerns about burial sites at the James River crossing, the Corps verified that cultural resources indeed were present and instructed Dakota Access to move the site to avoid them. Dakota Access did so. Furthermore, the Corps took numerous trips to Lake Oahe with members of the Tribe to identify sites of cultural significance. [The USACE commander] also met with the Tribe no fewer than four times in the spring of 2016 to discuss their concerns with the pipeline. Ultimately, the Corps concluded that no sites would be affected by the DAPL construction at Lake Oahe, and the State Historic Preservation Officer who had visited that site concurred. The Corps' effort to consult the Tribe on this site — the place that most clearly implicated the [SRST's] cultural interests — sufficed under the NHPA. . . . [T]his is not a case about empty gestures. . . . [T]he Corps and the Tribe engaged in meaningful exchanges that in some cases resulted in concrete changes to the pipeline's route.

[¶43] In addition, on June 14, 2017, the D.C. Court rejected the SRST's claim that the USACE's review process was inadequate; finding instead that the USACE amply considered viable alternatives to the final route, the risks of spill, and the environmental impact of any potential spill. The D.C. Court found that the environmental analysis extensively "discuss[ed] DAPL's 'reliability and safety,'" providing "the necessary content" to support its conclusion that the risk of a spill is very low.

[¶44] Further, the D.C. Court held that Dakota Access's choice of the approved route, rather than an alternative route that traversed closer to Bismarck, North Dakota, was not only legal, but prudent because, among other reasons, the proposed Bismarck route would have been co-located with existing utility or pipeline routes for only 3 percent of the total route, and thus posed a substantially greater risk of negative impact to cultural resources and the environment than the selected route.

c. Defendants misrepresented that Plaintiffs used extreme violence against peaceful protests.

[¶45] The Greenpeace Defendants and Banktrack also repeatedly published false

statements that Energy Transfer and/or Dakota Access used “extreme violence” against “peaceful, nonviolent”. 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: “[t]he real brutality [was] committed by violent protestors who use[d] improvised explosive devices to attack police, use[d] hacked information to threaten officers and their families, and use[d] weapons to kill livestock, harming farmers and ranchers.”

[¶46] The U.S. District Court for the District of North Dakota likewise described the protests as “mindless and senseless criminal mayhem,” with “protestors attaching themselves to construction equipment operated by Dakota Access; vandalizing and defacing construction equipment; trespassing on privately owned property; obstructing work on the pipeline.” *Dakota Access, LLC v. Archambault*, 2016 WL 5107005, at *2 (D.N.D. Sept. 16, 2016).

2. Defendants organize, fund, and support unlawful acts of trespass, property damage and destruction, and violence.

1. Defendants obstruct construction of the pipeline in North Dakota.

[¶47] 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 DAPL. As more and more out-of-state protestors descended on the Lake Oahe crossing, they formed massive encampments on surrounding land. Greenpeace USA sent its “direct action trainers,” including direct action trainer Harmony Lambert, to the camps to lead “daily direct action trainings,” including instruction in

“hard lockdown blockades” and “technical blockades.” Among other things, Greenpeace USA taught protestors how to use U-locks, steel cables, chains, and heavy metal pipes to attach themselves to construction equipment. Protestors proceeded to employ these tactics at DAPL construction sites on an almost daily basis between August and November 2016, causing a total shutdown of pipeline construction.

[¶48] In or around August 2016, Earth First!, in concert with the Greenpeace Defendants, gave \$500,000 in seed money to the most extreme anti-DAPL protestors to form and support “Red Warrior Camp.” Red Warrior Camp” was formed to organize the protestors most willing to engage in violence against DAPL and Plaintiffs’ employees. Greenpeace USA supported Red Warrior Camp by providing direct action training to its members and excusing its own employees from their jobs at Greenpeace to join Red Warrior Camp (while being paid by Greenpeace USA) to protest DAPL as members of Red Warrior Camp. Greenpeace USA also held a donation drive in ten or more cities across North America to raise money and supplies to support Red Warrior Camp, whose advocacy of violent protest against the pipeline, and demonstrated willingness to engage in violence against Plaintiffs’ employees, was well known.

[¶49] Red Warrior Camp openly announced its violent intentions and spread its violent message on social media via a series of recruitment videos posted by a purported parent organization styled the “Red Warrior Society.” One video, called an “Official Red Warrior Society Communique,” uses stylized footage of Red Warrior Camp members wearing hoods and masks standing in front of a camera as the sun rises behind them. One masked member holds a large bolt cutter over his shoulder. The video claims to bring a “message from the active front line resistance” and issues a call for “skilled and trained warriors who are prepared to evict the Dakota Access Pipeline.”



[¶50] Another video, entitled an “Official Warrior Communique From the Front Lines,” and produced with digital effects imitating a coded military transmission, features a masked Red Warrior Camp member issuing a call to action. The video repeatedly cuts to footage of violent anarchic riots across the world and urges the viewer to “take railroads. Take bridges. Do it! They cannot stop us all!”



[¶51] Another video documents Red Warrior Society’s “Mask Up and Donate” tour of the United States to seek financial support. The video states that the Red Warrior Society is “looking for likeminded warriors” who will “join [them] in [their] fight for water by any means necessary.” The video refers to Red Warrior Society members as “Black Snake Killaz” who eat “rubber bullets for breakfast.”

[¶52] Red Warrior Society also produced documentary-style recruitment and fundraising videos that glorified and celebrated its members’ unlawful acts. One video, titled “The Water Wars Have Begun #NODAPL,” focused on conflicts between members of Red Warrior Camp and law enforcement in North Dakota on October 27, 2016. The video displays images of burning barricades, burning cars, and violent confrontations between masked Red Warrior Camp members and law enforcement. A masked and hooded member of Red Warrior Camp states, “This is on the frontlines, right now. This is War.” As Red Warrior Camp burns roads and barricades, a masked member of Red Warrior Camp threatens, “This is nothing compared to what the corporate greed does.”





[¶53] Another video shows an event held at 8th Street and Memorial Highway in Mandan, North Dakota, in which members clad in military-style camouflage jackets, black hoods, ski goggles, and bandanas chant “black snake killas” and “no pipeline pigs.” The video also contains images of a mock Thanksgiving feast with a severed pig’s head covered in blood as law

enforcement personnel stand nearby.

[¶54] Red Warrior Society’s violent anti-DAPL propaganda was also spread to the public through social media posts, primarily via Facebook. These posts often featured images of masked Red Warrior Society members, calls to arms, and other violent, anti-DAPL imagery.

[¶55] One image stated, “No Compromise, Stand For Water” and depicted masked Red Warrior Society members pointing drawn bows at a Native American wearing a shirt inscribed “DAPL” sitting in front of stacks of money:



Red Warrior Society posted the image above with text that read: “By Any Means Necessary stand where ever [sic] you are the waters connect us all #EARTHSARMY.”

[¶56] In another Facebook post, Red Warrior Society provided “instructions” for disabling security guards or other law enforcement that stated: “Step 1. Wait for sentry to check his Facebook page on his phone. Step 2. Stab him in the neck” and depicted a man dressed in a military-style uniform being stabbed in the neck.



[¶57] In yet another post, Red Warrior Society posted an image of a masked Red Warrior Society member superimposed on a picture of a group of soldiers, with text that read “Grassroots Warriors Aren’t All Pacifists.”



[¶58] The image above was accompanied with a post from Red Warrior Society that criticized non-violent protestors, who pursued a non-violent, pacifist approach.

Red Warrior Society is full of prayerful people, we pray with our bodies as well as our spirits! Pacifism and those who use it and defend it in a laterally (sic) violent matter and even a violently physical matter (which makes no sense) need to educate and inform themselves on a diversity of tactics! #realitycheck #warriorup #grassroots #redwarrior #ancestralpride #warriorblood

[¶59] Red Warrior Society also used social media to post “communiqués,” including an October 10, 2016 message asking supporters to hear Red Warrior Society’s “War Cry” and issuing a call for “skilled and trained Warriors prepared to evict the Dakota Access Pipeline” to join the group in North Dakota and help Red Warrior Society “kill this Black Snake once and for all.”

[¶60] Each and every one of these videos and social media posts by Red Warrior Society illustrate Red Warrior Society’s rejection of peaceful protest, and its embrace and advocacy of violence and intimidation as a means to stopping construction of DAPL. Moreover, the posts served to incite mayhem and violence against DAPL.

[¶61] Throughout this period, Defendant Two Bulls served as, in her own words, Red Warrior Society’s “media coordinator,” and would have been responsible for publication of the images above.

[¶62] In addition, on October 12, 2016, in the midst of the violence inflicted on DAPL by Red Warrior Society, Two Bulls published an editorial article entitled “The Financial Powers Behind the Dakota Access Pipeline Must Be Confronted” on the website www.commondreams.org that called for “militant direct action” in the “fight against the Dakota Access Pipeline.” In the article, Two Bulls set forth “lessons moving forward” to guide opponents of DAPL, including to:

Make militant direct action the organizing strategy, not just a tool in the toolbox. . . . Movements around the world use confrontational action as a strategy, not just as a tactic. Militant movements in Serbia ousted Milosevic . . . Militant direct action is a strategy we use to build real movements, change power dynamics, shift societies and even remove governments.

A copy of Two Bulls article is attached hereto as Exhibit 1.

[¶63] As set forth below, Two Bulls and her Red Warrior Society cohorts heeded their own calls for “militant direct action” against DAPL and carried out a string of militant attacks on DAPL operations in North Dakota.

2. Hall leads Red Warrior Camp’s violent attacks on Plaintiffs and DAPL.

[¶64] On August 10, 2016, roughly 100 protestors led by Red Warrior Camp and Hall entered Dakota Access property near Lake Oahe. Upon entering, Red Warrior Camp members sought to obstruct Plaintiffs’ employees from gaining access to the property. One member -- who openly carried a 12-inch knife on his hip -- threatened DAPL personnel on their way to work that if they tried to enter the site they would get “hurt.” Another member chained himself to a DAPL fence.

[¶65] The following day, August 11, 2016, approximately 200 protestors led by Red Warrior Camp and Hall again raided Dakota Access property near Lake Oahe, jumping fences, threatening Plaintiffs’ employees by brandishing knives and other weapons, and further threatening to attack them. Upon entering the property, Red Warrior Camp members destroyed barricades constructed by Dakota Access to prevent trespassers from entering the construction site. Local police were called to provide protection to Plaintiffs’ employees.

[¶66] Attacks continued on August 12, 2016, when Red Warrior Camp members again raided Dakota Access property and threatened violence against Plaintiffs’ employees on the property and prevented others from entering to perform their jobs. As a result of the persistent and escalating threats of violence against Plaintiffs’ employees, local police -- who had been called on each of the previous days -- were again called in to provide protection to employees attempting to evacuate the property. As the police escorted the employees out, Red Warrior Camp members attacked departing cars with rocks and bottles.

[¶67] On September 3, 2016, Red Warrior Camp and Hall led hundreds of protestors in an attack on construction crews working on DAPL. Members of Red Warrior Camp stampeded horses, loosed dogs, and drove cars onto federal and private land where construction was occurring. Red Warrior Camp members attacked security personnel with knives, fence posts, flagpoles, and other improvised weapons.

[¶68] Red Warrior Camp members again attacked Plaintiffs' employees and Dakota Access property on September 6, 2016.

[¶69] Days later, Defendant Hall was arrested by local police and charged with criminal trespass for his role in the multiple attacks on DAPL.

[¶70] Red Warrior Camp attacked again on September 9, 2016. Masked members, armed with knives and hatchets, swarmed a DAPL construction site two miles east of Highway 1806, leaving a wake of destruction in their path.

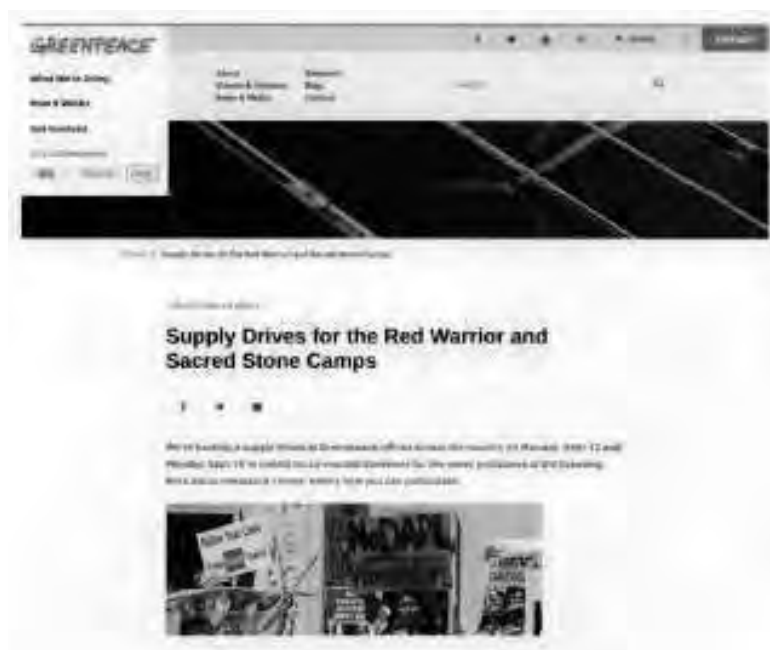
[¶71] On September 13, 2016, members of Red Warrior Camp again illegally entered a DAPL construction site and used steel pipes to lock themselves to DAPL construction equipment. The next day, September 14, 2016, Red Warrior Camp members trespassed at a DAPL construction site and attached themselves to a DAPL excavator, preventing its use.

3. **The Greenpeace Defendants raise funds to support Red Warrior Camp's violent mission.**

[¶72] Simultaneous with and after the attacks described above, the Greenpeace Defendants mounted a nationwide campaign to raise money and supplies to support and further Red Warrior Camp's attacks on DAPL. During this time, Greenpeace USA organized donation drives in ten cities across the United States to collect supplies to fund, feed, and house Red Warrior Camp members at Lake Oahe. Greenpeace USA directed funds be sent directly to Red Warrior Camp, notwithstanding Hall's recent arrest, and Greenpeace USA also delivered funds that it

collected to Red Warrior Camp. At this time, Red Warrior Camp's record of violence against DAPL personnel was well known, including within Greenpeace USA, and yet, with full knowledge that their aid to Red Warrior Camp would sustain it and allow its members to perpetrate violence, Greenpeace USA continued its fundraising activities on Red Warrior Camp's behalf. The supplies and funds Greenpeace USA raised directly enabled Red Warrior Camp's violent attacks on DAPL through October and November 2016.

[¶73] Greenpeace USA published an advertisement of its donation drives on its website, <https://www.greenpeace.org/usa/campaign-updates/supply-drive-for-dakota-red-warrior-camp/>:





1 Demonstrators at a solidarity rally for Dakota Access Pipeline activists in Washington, DC.
Robert Mayers.

For months, the Standing Rock Sioux are here alone been peacefully protesting the Dakota Access Pipeline project, which will carry more than 490,000 barrels of crude oil a day across their ancestral lands and under the Missouri River. If the pipeline leaks or spills, it could dump hundreds of thousands of barrels of crude oil in the Missouri River less than a half mile downstream from the tribe's water supply.

The momentum created by indigenous activists at Standing Rock is getting results. Resistance camps organizers have reached out for donations of camping, cooking, art, and other supplies to keep the growing peaceful opposition to the pipeline going as long as possible.

Stand with the Standing Rock Sioux by participating in donation drives in the following cities:

- Davis, MO, CA
- Denver, CO
- Los Angeles, CA
- New York City, NY
- Oakland, CA
- Portland, OR
- San Diego, CA
- San Jose, CA
- St. Petersburg, FL
- Washington, DC

You can drop off your contributions to any Greenpeace office between 10:00am - 2:00pm local time on **Monday, 8/12 or Monday 8/19.**

Here is a list of the supplies that the camp has requested:

CHANGING SUPPLIES	COMMON SUPPLIES	ESSENTIAL SERVICE SUPPLIES
• Tents (various sizes) • 1 person pop tents • Flashlights • Lanterns • Sleeping bags • Blankets • Heat blankets • Rain Coats/water gear • wool socks • Winter gear • Shades/canopies • Chen lights • Tarps • Folding tables • Coolers (large) • Cell phone holders • Solar powered chargers/light • Walkie talkies • Fire wood • Parachute cord • Jumper Cables	• Industrial sized pots and pans • Cooking stoves Back at Home: • Non-perishable food ART SUPPLIES: • Canvas (various sizes) • Poster board • Paint • Paint rollers • White flat sheets • Screen printing materials • Drawing ink (black or red) • T-shirts (Red/various sizes) • Sweatshirts (Grey/various sizes) • Large Tote/storage bags	• Metal shelving units • Nails • Screws • Battery powered drill • Shovels Tools, Sewing, Sewing kit • Variety handbags • Spools • Ace wraps • Stencils • Goodbook • Medical tape • Athletic tape • Medical kits • Ice/hot packs Gifts: • Gift Cards • Visa/Gift Cards

Please donate supplies of new or near-new condition appropriate (i.e. not damaged, dirty, or otherwise unfit for donation). Note that all donations are not tax-deductible.

You can also mail supply donations directly to the following address:

Red Warrior Camp
818 80th Ave
Fort Hays, NE 68624
United States
Phone: (402) 330-1511

[¶74] During this same time period, Greenpeace USA published Red Warrior Camp's public "call to action" -- authored by defendant Two Bulls -- on its website. This communique urged the public to "*take escalated action to stop the pipeline.*" A copy of the communique is attached hereto as Exhibit 2.

[¶75] Red Warrior Camp continued violent attacks on DAPL over the following months. On September 25, 2016, Red Warrior Camp led hundreds of protestors who trespassed on Dakota Access property west of Highway 6, damaging equipment on site. When security personnel informed Red Warrior Camp members they were trespassing, members brandished knives and assaulted a security guard, dragging the security guard 100 yards. Paramedics were called to treat the security guard for injuries.

[¶76] On October 27, 2016, Red Warrior Camp led protestors who again trespassed on Dakota Access property near Highway 1806, set up roadblocks to prevent access to the area, and erected an encampment on Dakota Access property. When law enforcement requested that Red Warrior Camp members remove the barricade and leave Dakota Access's property, Red Warrior Camp members responded with violence. On this night, Red Warrior Camp members built makeshift barriers between themselves and the police and lit them on fire to prevent law enforcement from evicting them from the site. Red Warrior Camp members threw Molotov cocktails at law enforcement, setting fire to Dakota Access land and appurtenant structures. Red Warrior Camp members also deliberately set fire to numerous DAPL vehicles and its heavy construction equipment, destroying the property in the process.











[¶77] On November 20, 2016, Red Warrior Camp members gathered at a location known as Backwater Bridge. Red Warrior Camp members tore down barbed wire fencing and illegally entered Dakota Access property. Armed Red Warrior Camp members attacked police, ignited fires on and near the bridge, and threw grenades and flares at law enforcement officers.

4. SRST votes to evict Red Warrior Camp, condemning its violence against DAPL.

[¶78] As a result of Red Warrior Camp's violent tactics, on November 1, 2016, the SRST Tribal Council unanimously voted to ask Red Warrior Camp to decamp from the Lake Oahe area out of concern for the safety of non-violent protestors opposing DAPL and because SRST rejected Red Warrior Camp's violent tactics. Red Warrior Camp ignored SRST's request, and not only did not leave the area, but continued to perpetrate violent operations against DAPL, rather than adopt the non-violent means of protest that SRST preferred and supported.

3. Defendants target Energy Transfer and Dakota Access's respective business constituents.

[¶79] In addition to the misrepresentations regarding Energy Transfer, Dakota Access, and DAPL that the Greenpeace Defendants and Banktrack disseminated to the general public and their followers in the anti-fossil fuel and environmental activist communities, these Defendants also mounted a misinformation campaign directly targeted at both Energy Transfer and Dakota Access's business constituents in an effort to induce the termination of existing contracts or relationships or the impairment of these relationships. In particular, the Greenpeace Defendants and Banktrack focused their efforts on banks financing DAPL and "any other credit facilities to the Energy Transfer Family of Partnerships," as well as Energy Transfer's other ongoing and prospective infrastructure projects. The specific misrepresentations directed by the Greenpeace Defendants and Banktrack are set forth in detail in the Second Amended Appendix A to the Second Amended Complaint. These actions, together with those detailed below, were designed to inflict maximum financial harm to Energy Transfer and Dakota Access, and succeeded in doing significant damage to the companies and their relationship with the financial marketplace.

[¶80] For example, on November 8, 2016, Banktrack and Greenpeace USA sent a joint letter to the Equator Principles Association, a consortium of global banks that includes Energy Transfer and Dakota Access lenders DNB, ING, Nordea, and BNP Paribas. The letter falsely alleged that Energy Transfer and Dakota Access committed "gross violations of Native land titles," "deliberately desecrated documented burial grounds and other culturally important sites," and violated human rights.

[¶81] In reliance on these misrepresentations, DNB, one of the banks funding DAPL, sold its equity interest in Energy Transfer, totaling approximately \$3 million. DNB also promised to reconsider its participation in the lending facility to DAPL. Greenpeace USA took credit for

DNB's divestment of shares in Energy Transfer, but continued to call on DNB to exit its loan to Energy Transfer.

[¶82] Between November 28-30, 2016, Banktrack, GPI, and Greenpeace USA sent joint letters to 17 banks involved in the \$2.5 billion lending facility to DAPL, including DNB, Citigroup, and ING, urging these banks to exit DAPL loan facility based on false claims about the impact of DAPL on cultural and historical resources. Immediately after, Greenpeace USA delivered a separate letter to Citibank reiterating the same false statements demanding that Citibank "withdraw from the [DAPL] loan agreement and any other credit facilities to the Energy Transfer Family of Partnerships."

[¶83] In response to Greenpeace Defendants' and Banktrack's misrepresentations, Citibank announced the retention of Foley Hoag LLP, a law firm with human rights expertise, on behalf of the consortium of banks financing DAPL. The consortium retained Foley Hoag to review various matters relating to the permitting process. Over the course of the following four months, Energy Transfer incurred fees and diverted resources to respond to requests for information in connection with Foley Hoag's investigation.

[¶84] The Greenpeace Defendants and Banktrack continued to disseminate misrepresentations to the banks throughout 2017. In reliance on these misrepresentations, banks terminated their relationships with Energy Transfer and Dakota Access. In January 2017, ING divested its shares in Energy Transfer.

[¶85] On February 2, 2017, after meeting with Greenpeace Netherlands and Banktrack, who misrepresented that Energy Transfer violated the SRST's rights, ABN AMRO announced that it would not pursue new business with Energy Transfer. On February 8, 2017, after learning of Greenpeace USA's false representation that DAPL traverses reservation land, Nordea announced

it would exclude Energy Transfer from all investments.

[¶86] In March 2017, after representatives of Greenpeace Netherlands dug room for and planted 15 meters of super heavy pipe at ING headquarters in protest against DAPL, ING sold its share of the \$2.5 billion DAPL credit facility, totaling \$120 million. DNB sold its estimated \$340 million share of DAPL loan, after numerous calls by Greenpeace Defendants and Banktrack to end its participation. Norwegian funds KLP and Storebrand sold their shares in Energy Transfer.

[¶87] On April 5, 2017, BNP Paribas sold its \$120 million share of the DAPL loan.

[¶88] Even after DAPL's completion, Greenpeace Defendants continue to interfere with Energy Transfer's business relationships through their dissemination of false statements about Energy Transfer and DAPL. Beginning around March 2018 and continuing to this day, Greenpeace Defendants have demanded banks that have "provided and/or arranged loans to ETP and related companies" -- labeled the "dirty dozen banks" -- "to end their financial relationship with ETP and relevant subsidiaries," based on representations already proven demonstrably false, including the false allegations that Energy Transfer "damag[ed] at least 380 sacred and cultural sites along the DAPL pipeline route."

C. Defendants' criminal scheme caused substantial harm in North Dakota.

[¶89] Defendants' campaign against Energy Transfer and Dakota Access has had significant contact with, and effects in, North Dakota where Energy Transfer and Dakota Access were actively involved in the construction of 357 miles of DAPL.

[¶90] Defendants' unlawful scheme was intended to -- and did -- cause harm to Energy Transfer and Dakota Access in North Dakota. First, Greenpeace Defendants' campaign of misinformation was directed at disrupting lawful construction activity near the Lake Oahe crossing in North Dakota. Second, Greenpeace Defendants, Red Warrior Camp, Cody Hall, and Krystal Two Bulls organized, funded, and directed violent activities against DAPL construction sites in

North Dakota. Third, Greenpeace Defendants targeted Energy Transfer and Dakota Access's business constituents, intending to interfere with Energy Transfer and Dakota Access's financing and stop construction in North Dakota.

[¶91] As a result of Defendants' wrongful acts, Energy Transfer and Dakota Access each suffered substantial damage in North Dakota, including costs of delayed construction, unanticipated costs of professional security services to ward off violent protesters, and costs associated with mitigating Defendants' misinformation campaign in North Dakota.

[¶92] Defendants' wrongful conduct also caused immense harm to the state of North Dakota and its citizens. North Dakota taxpayers were damaged in an amount of more than \$38 million to pay for state and local responses to the protests and related illegal activities. The SRST -- on whose behalf Defendants purported to act -- incurred significant damages to begin major cleanup and restoration in January 2017 to prevent snowmelt from washing tens of thousands of pounds of garbage into the Cannonball and Missouri Rivers and contaminating the very waters the Defendants were purporting to protect. On federal land alone, it took USACE approximately three weeks in March and April 2017, and \$1.1 million of taxpayers' money, to clean up after the protesters left 835 dumpsters worth of trash and debris in their wake.

CAUSES OF ACTION

COUNT I

TRESPASS TO LAND AND CHATTEL (DAKOTA ACCESS AGAINST THE GREENPEACE DEFENDANTS, RED WARRIOR SOCIETY, HALL, AND TWO BULLS)

[¶93] Dakota Access re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶94] As set forth above, the above-named Defendants willfully entered Dakota Access's property without consent or other privilege.

[¶95] The above-named Defendants funded, trained, directed, and caused others to willfully enter Dakota Access's property without consent or other privilege.

[¶96] Upon willfully entering Dakota Access's property without consent or other privilege, the above-named defendants and individuals funded and trained by the above-named Defendants maliciously and wantonly damaged and destroyed DAPL property, prevented Dakota Access from using its land and construction equipment, disrupted Dakota Access's operations, and caused financial harm to Dakota Access.

[¶97] As a result of the above-named defendants' intentional trespass, Dakota Access suffered harm and damages in an amount to be proven at trial, including damages for damaged or destroyed construction equipment, fencing and other barrier systems, and land; loss of use of Dakota Access's land and construction equipment; numerous construction delays; and increased costs of operations. Because the foregoing acts were committed with oppression, fraud, or actual malice, Dakota Access is entitled to an award of exemplary damages.

COUNT II

AIDING AND ABETTING TRESPASS TO LAND AND CHATTEL (DAKOTA ACCESS AGAINST THE GREENPEACE DEFENDANTS, HALL, AND TWO BULLS)

[¶98] Dakota Access re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶99] Individuals funded, trained, directed, and supported by the above-named Defendants committed unlawful acts of trespass onto and conversion of Dakota Access's property.

[¶100] Each of the above-named Defendants knew that these individuals intended to and did commit unlawful acts of trespass onto and conversion of Dakota Access's property.

[¶101] Each of the above-named Defendants provided substantial assistance or encouragement to the trespass onto and conversion of Dakota Access's property, including by

providing funds, personnel, supplies, and training in support of the commission of unlawful acts against Dakota Access, and the intentional infliction of financial harm resulting therefrom.

[¶102] [¶110] As a direct, proximate result of each Defendant's substantial assistance and encouragement, Dakota Access has been injured and suffered damages in an amount to be proven at trial. Because the foregoing acts were committed with oppression, fraud, or actual malice, Dakota Access is entitled to an award of exemplary damages.

COUNT III

CONVERSION

(DAKOTA ACCESS AGAINST THE GREENPEACE DEFENDANTS, RED WARRIOR SOCIETY, HALL, AND TWO BULLS)

[¶103] Dakota Access re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶104] As set forth above, Defendants intentionally detained or destroyed Dakota Access's personal property and wrongfully exercised dominion over Dakota Access's personal property, in violation of Energy Transfer's property rights, and causing it material financial harm.

[¶105] Defendants funded, trained, directed, and caused others to willfully detain or destroy Dakota Access's personal property and wrongfully exercise dominion over Dakota Access's personal property, in violation of Dakota Access's property rights, and causing it material financial harm.

[¶106] As a result of Defendants' unlawful conversion, Dakota Access suffered harm and damages in an amount to be proven at trial, including damages for damaged or destroyed construction equipment and fencing and other barrier systems; loss of use of Dakota Access's land and construction equipment; numerous construction delays; and increased costs of construction and operations. Because the foregoing acts were committed with oppression, fraud, or actual malice, Dakota Access is entitled to an award of exemplary damages.

COUNT IV

AIDING AND ABETTING CONVERSION (DAKOTA ACCESS AGAINST THE GREENPEACE DEFENDANTS, HALL, AND TWO BULLS)

[¶107] Dakota Access re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶108] Individuals funded, trained, directed, and supported by the above-named Defendants committed unlawful acts of trespass onto and conversion of Dakota Access's property.

[¶109] Each of the above-named Defendants knew that these individuals intended to and did commit unlawful acts of trespass and conversion of Dakota Access's property.

[¶110] Each of the above-named Defendants provided substantial assistance or encouragement to the trespass onto and conversion of Dakota Access's property, including by providing funds, personnel, supplies, and training in support of the commission of unlawful acts against Dakota Access.

[¶111] As a direct, proximate result of each Defendant's substantial assistance and encouragement, Dakota Access has been injured and suffered damages in an amount to be proven at trial. Because the foregoing acts were committed with oppression, fraud, or actual malice, Dakota Access is entitled to an award of exemplary damages.

COUNT V

NUISANCE (DAKOTA ACCESS AGAINST THE GREENPEACE DEFENDANTS, RED WARRIOR SOCIETY, HALL, AND TWO BULLS)

[¶112] Dakota Access re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶113] [¶121] As set forth above, the above-named Defendants committed unlawful acts that unreasonably interfered with Dakota Access's ability to use its easements.

[¶114] The above-named Defendants funded, trained, directed, and caused others to willfully invade Dakota Access's easements without consent or other privilege.

[¶115] Upon willfully invading Dakota Access's easements without consent or other privilege, the above-named defendants and individuals funded and trained by the above-named Defendants maliciously and wantonly damaged and destroyed DAPL property, prevented Dakota Access from using its land and construction equipment, disrupted Dakota Access's operations, and caused financial harm to Dakota Access.

[¶116] As a result of the above-named defendants' unlawful interference with Dakota Access's easements, Dakota Access suffered harm and damages in an amount to be proven at trial, including damages for loss of use of its easements; numerous construction delays; and increased costs of operations. Because the foregoing acts were committed with oppression, fraud, or actual malice, Dakota Access is entitled to an award of exemplary damages.

COUNT VI

AIDING AND ABETTING NUISANCE (DAKOTA ACCESS AGAINST THE GREENPEACE DEFENDANTS, HALL, AND TWO BULLS)

[¶117] Dakota Access re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶118] Individuals funded, trained, directed, and supported by the above-named Defendants committed unlawful acts that unreasonably interfered with Dakota Access's ability to use its easements.

[¶119] Each of the above-named Defendants knew that these individuals intended to and did commit unlawful acts that unreasonably interfered with Dakota Access's ability to use its easements.

[¶120] Each of the above-named Defendants provided substantial assistance or

encouragement to the unlawful acts that unreasonably interfered with Dakota Access's ability to use its easements, including by providing funds, personnel, supplies, and training in support of the commission of unlawful acts against Dakota Access.

[¶121] As a direct, proximate result of each Defendant's substantial assistance and encouragement, Dakota Access has been injured and suffered damages in an amount to be proven at trial. Because the foregoing acts were committed with oppression, fraud, or actual malice, Dakota Access is entitled to an award of exemplary damages.

COUNT VII
DEFAMATION
(ENERGY TRANSFER AND DAKOTA ACCESS AGAINST THE GREENPEACE
DEFENDANTS)

[¶122] Energy Transfer and Dakota Access re-allege and incorporate every allegation in the foregoing paragraphs as if set forth in full.

[¶123] As set forth above, Greenpeace Defendants and Banktrack knowingly and intentionally published false and injurious statements about and concerning Energy Transfer and Dakota Access, including:

- a. DAPL traverses SRST lands;
- b. Energy Transfer and Dakota Access used excessive and illegal force against peaceful protestors; and
- c. Energy Transfer and Dakota Access intentionally desecrated SRST's cultural resources.

[¶124] Greenpeace Defendants and Banktrack published these false and misleading statements in numerous publications on the internet, social media platforms, and in direct emails, letters, telephone communications, and in-person meetings to Energy Transfer and Dakota Access's creditors, investors, and other critical market constituents, as well as to the public at large.

[¶125] Greenpeace Defendants and Banktrack made and published the false and

defamatory statements set forth herein with actual malice, as such statements were made by Greenpeace Defendants and Banktrack with knowledge of their falsity or reckless disregard for their truth.

[¶126] Greenpeace Defendants and Banktrack published these falsehoods to third-parties and understood and intended that these false statements would have the effect of injuring Energy Transfer and Dakota Access's reputation, preventing others from doing business with Energy Transfer and Dakota Access, and interfering with Energy Transfer and Dakota Access's existing business relationships.

[¶127] Greenpeace Defendants and Banktrack's false statements directly harmed Energy Transfer and Dakota Access's business, property, and reputation in an amount to be determined at trial. Energy Transfer and Dakota Access have each been injured. Their damages include lost financing; lost profits; increased expenses; legal fees; and monies expended to mitigate the impact of Greenpeace Defendants' and Banktrack's defamation campaign. Because the foregoing acts were committed with oppression, fraud, or actual malice, Energy Transfer and Dakota Access are entitled to an award of exemplary damages.

COUNT VIII

TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS (ENERGY TRANSFER AND DAKOTA ACCESS AGAINST THE GREENPEACE DEFENDANTS)

[¶128] Energy Transfer and Dakota Access re-allege and incorporate every allegation in the foregoing paragraphs as if set forth in full.

[¶129] Energy Transfer and Dakota Access had many existing and prospective valid business relationships with third-parties, including with: (i) existing and prospective creditors; (ii) existing and prospective investors; and (iii) existing and prospective long-term capacity transportation shippers.

[¶130] The Greenpeace Defendants knew of Energy Transfer and Dakota Access's existing and prospective business relationships with these third-parties.

[¶131] 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.

[¶132] Energy Transfer and Dakota Access each had a reasonable expectation of obtaining the benefits of these existing and prospective business relationships. Each of the Defendants was aware of, and intended to cause, this detrimental impact on Energy Transfer and Dakota Access's existing and prospective business relationships.

[¶133] The Greenpeace Defendants' tortious interference directly and proximately harmed Energy Transfer and Dakota Access's business relationships. Energy Transfer and Dakota Access's damages include lost financing, increased cost of capital, increased operating costs, lost revenue, injury to reputation, mitigation costs, and attorney's fees in an amount to be determined at trial. Because the foregoing acts were committed with oppression, fraud, or actual malice, Energy Transfer and Dakota Access are entitled to an award of exemplary damages.

COUNT IX

CIVIL CONSPIRACY (ENERGY TRANSFER AND DAKOTA ACCESS AGAINST ALL DEFENDANTS)

[¶134] Energy Transfer and Dakota Access re-allege and incorporate every allegation in the foregoing paragraphs as if set forth in full.

[¶135] Each of the Defendants conspired with the others with respect to committing the

unlawful acts set forth in Counts I through VI. Defendants shared and agreed upon the same conspiratorial objective, which was to stop construction of DAPL and harm Energy Transfer and Dakota Access through the publication and dissemination of false statements concerning Energy Transfer, Dakota Access, and DAPL; obstruction of DAPL construction by means of trespass, vandalism, violence, property destruction, and other unlawful activity; and interference with Energy Transfer and Dakota Access's critical business relationships.

[¶136] Defendants carried out their conspiratorial scheme by the commission of wrongful and overt acts, including publishing and disseminating numerous defamatory statements concerning Energy Transfer, Dakota Access, and DAPL; organizing, supporting, funding, and committing acts of trespass, vandalism, property destruction, and violence to obstruct construction; and interfering with Energy Transfer's and Dakota Access's business relationships.

[¶137] As a direct, proximate result of the operation and execution of the conspiracy, Energy Transfer and Dakota Access have each been injured and suffered damages in an amount to be proven at trial. Because the foregoing acts were committed with oppression, fraud, or actual malice, Energy Transfer and Dakota Access are entitled to an award of exemplary damages.

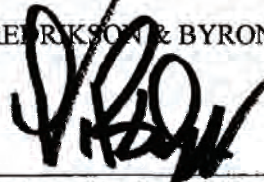
PRAYER FOR RELIEF

[¶138] WHEREFORE, Energy Transfer and Dakota Access pray for judgment as set forth below.

- A. For actual, consequential, special, restitution, and exemplary damages in an amount to be proven at trial.
- B. For attorney's fees.
- C. For pre- and post-judgment interest as permitted by law.
- D. For such other legal and equitable relief as the Court may deem Energy Transfer and Dakota Access are entitled to receive.

DATED this 6th day of March, 2024.

FREDERICKSON & BYRON, P.A.



By: _____

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Energy Transfer Operating, L.P., and Dakota
Access, LLC*

EXHIBIT 4

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

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

Plaintiffs,

v.

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

Defendants.

Case No. 30-2019-CV-00180

COMPLAINT

[¶1] Plaintiffs Energy Transfer LP and Energy Transfer Operating, L.P. (together, "Energy Transfer" or the "Company"), for their complaint against Defendants Greenpeace International (aka "Stichting Greenpeace Council"); Greenpeace, Inc.; Greenpeace Fund, Inc.; Charles Brown (collectively, the "Greenpeace Defendants"); Red Warrior Society (aka "Red Warrior Camp"); Cody Hall; Krystal Two Bulls; and Charles Brown, allege as follows:

INTRODUCTION

[¶2] This action arises from Defendants' unlawful and violent scheme to cause financial harm to Energy Transfer, physical harm to its employees and infrastructure, and to disrupt and prevent Energy Transfer's construction of the Dakota Access Pipeline ("DAPL") -- a 1,172-mile long underground crude oil pipeline which extends from the Bakken region of North Dakota to Patoka, Illinois. Defendants' unlawful acts include violent attacks on Energy Transfer 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. All the while, Defendants utilized the anti-DAPL platform to raise tens of millions of dollars in donations from the public under the guise of concern over indigenous peoples' rights.

[¶3] The conduct and harm alleged here has been described by the U.S. District Court for the District of North Dakota as “mindless and senseless criminal mayhem” that is not protected by the rights of free speech and assembly:

With respect to the assertion the movement has been a peaceful protest, one need only turn on a television set or read any newspaper in North Dakota. There the viewer will find countless videos and photographs of the “peaceful” protestors attaching themselves to construction equipment operated by Dakota Access; vandalizing and defacing construction equipment; trespassing on privately-owned property; obstructing work on the pipeline; and verbally taunting, harassing, and showing disrespect to members of the law enforcement community. . . . The estimated damage to construction equipment and loss of work on the project is far in excess of several million dollars. . . . To suggest that all of the protest activities to date have been “peaceful” and law-abiding defies commonsense and reality.

Dakota Access, LLC v. Archambault, No. 1:16-cv-296, 2016 WL 5107005, at *2 (D.N.D. Sept. 16, 2016).

[¶4] Defendants thus advanced their extremist agenda -- to attack and disrupt Energy Transfer's business and its construction of DAPL -- through means far outside the bounds of democratic political action, protest, and peaceful, legally protected expression of dissent. Instead, Defendants pursued “militant direct action” -- in the words of Defendant Two Bulls -- including trespass onto Energy Transfer's private property; violent and destructive attacks on Energy Transfer construction equipment and other private property; arson; and intimidation, harassment, and assault of Energy Transfer employees.

[¶5] Defendants also engaged in large-scale, intentional dissemination of misinformation and outright falsehoods regarding Energy Transfer, DAPL's environmental

impact, and Energy Transfer's extensive efforts to address the concerns of local North Dakota communities about the pipeline, including spreading defamatory falsehoods regarding DAPL's supposed, but actually nonexistent, intrusion on local indigenous peoples' -- the Standing Rock Sioux Tribe's -- historically important burial sites and water supplies; as well as a defamatory campaign to interfere with and, indeed, destroy Energy Transfer's relationships with its investors, financiers, and other constituents.

[¶6] In fact, prior to starting construction on the pipeline, Energy Transfer spent more than two years working closely with the United States Army Corps of Engineers ("USACE"), and North Dakota officials, to identify a route for the pipeline that would have the least impact on local stakeholders and resources. Energy Transfer went to great lengths to engage with all interested stakeholders potentially affected by the pipeline's construction, including the Standing Rock Sioux Tribe ("SRST"). As a result, DAPL almost exclusively tracks private land, does not encroach on SRST land, and entirely avoids disturbance to historic and cultural resources. Accordingly, USACE determined -- with the concurrence of the North Dakota State Historic Preservation Officer -- that the Project *affected no historic properties*. USACE also determined that because Energy Transfer used the latest safety and protective technologies to construct DAPL, the risk of spill was extremely low.

[¶7] Notwithstanding Defendants' specific knowledge of the foregoing, Defendants' actions and words made clear that their purpose was to inflict as much financial harm as possible on Energy Transfer, whether or not they could actually prevent construction of the pipeline. In fact, when court decisions and other events confirmed the lawfulness and propriety of DAPL, Defendants stated openly that their efforts were nonetheless justified by the tremendous additional expense and delay they caused to Energy Transfer.

[¶8] Defendants' malicious intent -- and their stunning hypocrisy -- were evidenced by, among other things, the fact that the call for "direct action" incited, led, and financially

supported by Defendants left tribal and other lands in an utterly degraded condition -- strewn with rotting garbage, pest-infested firewood, human waste, orphaned animals, abandoned tents and other structures, and over 830 dumpster loads of trash. The Greenpeace Defendants -- whose pockets were lined with tens of millions of dollars in anti-DAPL contributions they raised from around the globe -- disappeared, and contributed *not a cent* to restore North Dakota to the condition in which they found it. Instead, the bill for the multi-million dollar cleanup of the “environmental disaster” left by protestors fell largely upon the citizens of North Dakota and American taxpayers, and the Standing Rock Sioux Tribe.

[¶9] As the citizens of North Dakota experienced firsthand, the Defendants, purportedly protesting Energy Transfer and DAPL, inflicted other significant harm upon the State of North Dakota and its citizens in addition to the environmental mess they left behind. North Dakota citizens suffered months of harassment, intimidation, and threats from protestors; their property was destroyed; ranchers’ cattle and bison were butchered or maimed; graves were vandalized; and local residents’ private property was vandalized, leaving people feeling unsafe and under siege in their own homes. The State of North Dakota publicly condemned Defendants’ conduct: “[t]he real brutality [was] committed by violent protesters who use[d] improvised explosive devices to attack police, use[d] hacked information to threaten officers and their families, and use[d] weapons to kill livestock, harming farmers and ranchers.”

[¶10] By this action, Energy Transfer seeks to recover the millions of dollars of damages caused by Defendants’ unlawful, malicious, and coordinated attack on Energy Transfer and DAPL. Energy Transfer 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 disrupt Energy Transfer as much as possible; and it is for all of this that Energy Transfer seeks to vindicate its own legal rights in the face of Defendants' extensive, unjustified, and unlawful conduct that is set forth in detail in this complaint.

PARTIES AND RELEVANT NON-PARTIES

Plaintiffs

[¶11] Plaintiff Energy Transfer LP is a master limited partnership organized under the laws of Delaware and headquartered in Dallas, Texas. Energy Transfer LP was formerly known as Energy Transfer Equity, L.P.

[¶12] Plaintiff Energy Transfer Operating, LP is a master limited partnership organized under the laws of Delaware and headquartered in Dallas, Texas. Energy Transfer Operating, L.P. was formerly known as Energy Transfer Partners, L.P.

[¶13] Energy Transfer owns the largest liquid petroleum and natural gas pipeline system by volume in the United States, spanning nearly 72,000 miles. Energy Transfer holds a 51 percent interest in Dakota Access, LLC ("Dakota Access"), a limited liability company organized under the laws of Delaware with its headquarters and principal place of business in Dallas, Texas. Dakota Access owns and operates DAPL.

The Greenpeace Defendants

[¶14] Defendants Greenpeace International, aka Stichting Greenpeace Council ("GP-International" or "GPI"), Greenpeace, Inc. ("GP-Inc."), and Greenpeace Fund, Inc. ("GP-Fund") are each constituents of the international "Greenpeace" organization, a network of legally distinct, yet coordinated, international, national, and regional associations, and are inextricably bound with each other.

[¶15] Defendant GPI is a Dutch not-for-profit foundation based in Amsterdam, the Netherlands. GPI reviews, approves, and underwrites the activities of national and regional

“Greenpeace” entities, including GP-Inc. and GP-Fund. GPI also directs the activities of international Greenpeace entities, such as Greenpeace Netherlands and Greenpeace Japan.

[¶16] GP-Inc. is a nonprofit corporation organized under the laws of California and headquartered in Washington, D.C. GP-Inc. is licensed to do business in many states, including North Dakota.

[¶17] GP-Fund is a nonprofit corporation organized under the laws of California and headquartered in Washington, D.C. GP-Fund is licensed to do business in many states, including North Dakota.

[¶18] GP-Inc. and GP-Fund collectively hold themselves out as “Greenpeace USA” and share an executive director, Annie Leonard. Employees of GP-Inc. and GP-Fund are publicly identified as representatives of “Greenpeace USA.” GP-Inc. and GP-Fund publish reports as “Greenpeace USA,” and act together as “Greenpeace USA.” GP-Inc. and GP-Fund have admitted in public filings that they jointly “control all Greenpeace operations in the United States” and “pursuant to a ‘protocol’ between [] all other Greenpeace entities worldwide, including . . . Greenpeace International, no Greenpeace operations are to occur in the United States without [their] consent.” GPI and Greenpeace USA each purport to be “expert” organizations that publish reports based on “expert analysis and investigations.”

[¶19] Defendant Charles Brown is a resident of Virginia. In 2018, Greenpeace USA recruited and hired Brown as a “pipeline campaigner” focused on “Greenpeace’s priority project of 2018” -- stopping pipelines and interfering with Energy Transfer’s infrastructure projects. Brown has trained, supported, and directed ongoing obstruction against Energy Transfer’s infrastructure projects, including the Bayou Bridge Pipeline in Louisiana.

Defendants Red Warrior Society aka Red Warrior Camp, Cody Hall, and Krystal Two Bulls

[¶20] Defendant Cody Hall is a resident of South Dakota. Defendant Hall is a leader, organizer, spokesperson, and fundraiser for Red Warrior Society.

[¶21] Defendant Krystal Two Bulls is a resident of Montana. Defendant Two Bulls serves as a leader, organizer, media coordinator, and fundraiser for Red Warrior Society.

[¶22] Red Warrior Society is an informal organization of the most violent, most radical anti-DAPL activists in North Dakota and across the country. Red Warrior Society is a front organization for Greenpeace USA intended to provide cover for Greenpeace USA's support of and engagement in illegal, violent "direct action" against Energy Transfer and DAPL. Defendant Hall formed Red Warrior Camp, the physical incarnation of Red Warrior Society, near the DAPL crossing at Lake Oahe in the fall of 2016 with the financial support and direction of Greenpeace USA and Earth First! in connection with anti-DAPL protests in North Dakota.

[¶23] Red Warrior Society, and its members at Red Warrior Camp, distinguished themselves from other activists by their express rejection of non-violent protest, and embrace of violence and "militant direct action" tactics against Energy Transfer and DAPL. "Militant direct action," as the term is used by Red Warrior Society, means the destruction of Energy Transfer construction equipment and other property, attacks on and intimidation of Energy Transfer employees, and operations specifically designed to damage or destroy DAPL. In the words of Defendant Two Bulls, "Militant direct action is a strategy we use to build real movements, change power dynamics, shift societies and even remove governments."

Non-Party Banktrack

[¶24] Banktrack, aka Stichting Banktrack, is a not-for-profit foundation based in Nimegen, the Netherlands. Banktrack coordinated with Greenpeace Defendants to publish and disseminate false statements about Energy Transfer and DAPL. Banktrack also coordinated with Greenpeace Defendants to disseminate false statements about Energy Transfer and DAPL to Energy Transfer's lenders to induce the termination or impairment of these relationships.

Non-Party Earth First!

[¶25] Earth First!, an unincorporated association, is a radical environmentalist activist group. In connection with DAPL protests, Earth First! provided \$500,000 to extremist protestors, including Cody Hall and Krystal Two Bulls, to form and fund the violent Red Warrior Camp at DAPL crossing near Lake Oahe; coordinated with Greenpeace USA to provide training in “direct action” and criminal sabotage to Red Warrior Camp; and distributed copies of its Direct Action Manual and Ecodefense Guide -- which provide instruction on “direct action” techniques -- at protest camps in North Dakota and other sites along DAPL’s route.

JURISDICTION AND VENUE

[¶26] This Court has jurisdiction pursuant to N.D. R. Civ. P. 4(b)(2) because each defendant directly and through agents transacts business within the state; committed tortious acts within or outside the state causing injury to another person or property within the state; and/or have committed a tort within the state causing injury to another person or property within or outside the state.

[¶27] Venue is proper in Morton County pursuant to N.D.C.C. § 28-04-05 because a substantial number of the events and conduct giving rise to this action occurred in this county.

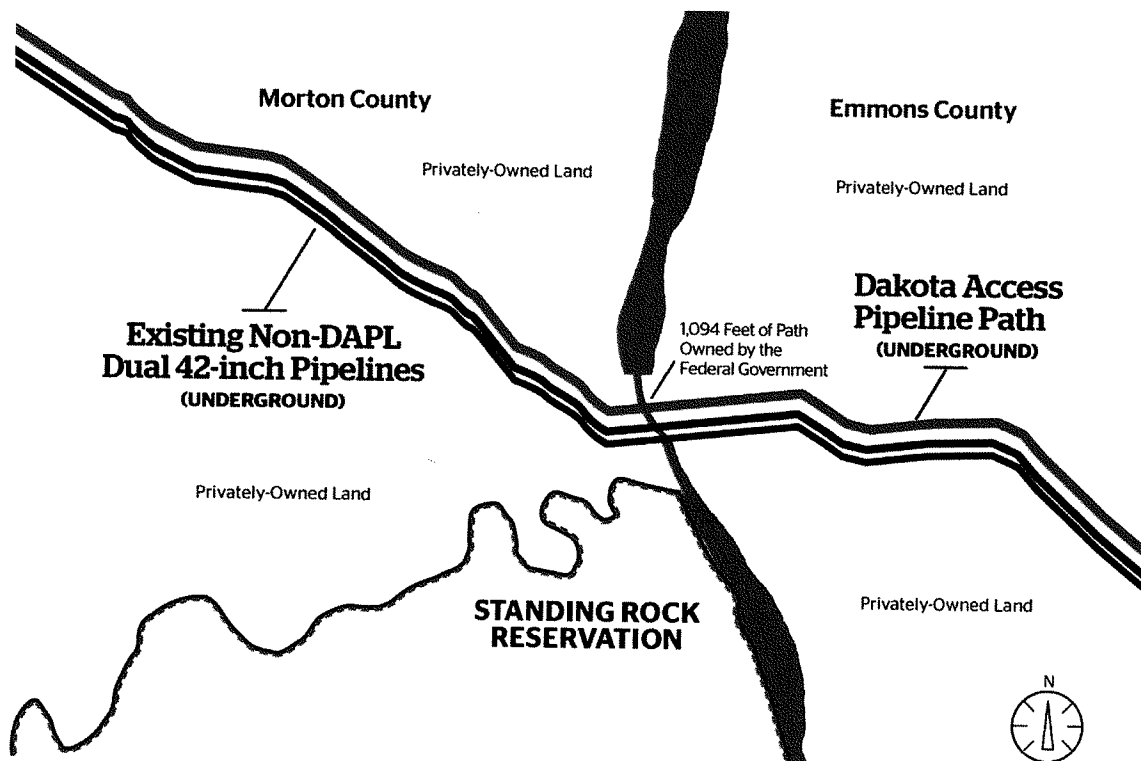
FACTS

A. Energy Transfer carefully and extensively plans and designs DAPL to track privately owned land and minimize environmental impact.

[¶28] On June 25, 2014, Energy Transfer announced the development and construction of DAPL -- a 1,172 mile underground oil pipeline -- to transport nearly a half-million barrels of domestically produced crude oil across four states on a daily basis. Via the pipeline, oil is transported from the Bakken region in North Dakota, across South Dakota and Iowa, to Patoka, Illinois, where it connects to the national and international oil refining and distribution networks.

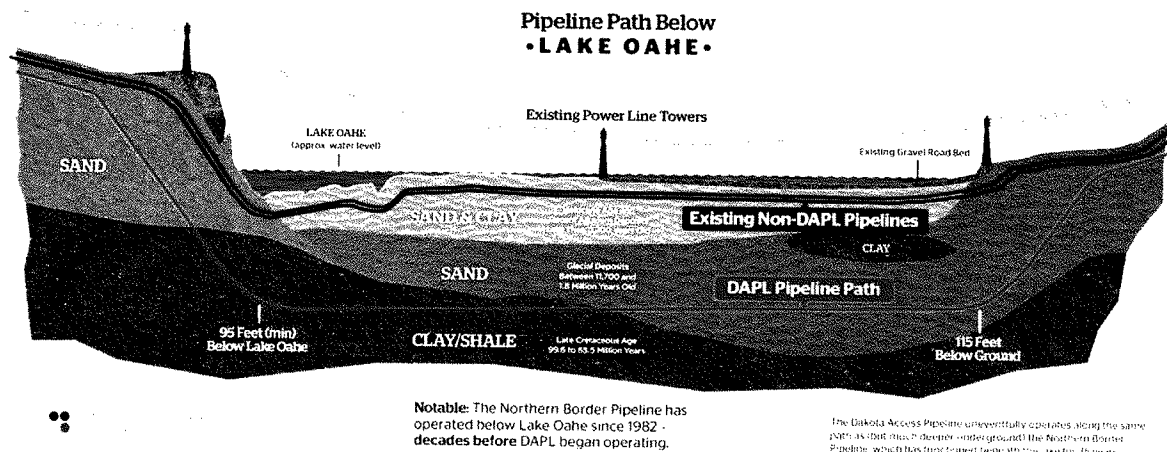
[¶29] For the next 25 months, the Company -- working closely with USACE and North Dakota state officials -- conducted extensive planning to identify a route for the pipeline that would have the least impact on community stakeholders, the environment, and other natural and cultural resources.

[¶30] As a result of Energy Transfer's careful planning, DAPL traverses private land for 99% of its route. One exception is where DAPL crosses federally-owned and regulated waters at the Missouri River under the man-made Lake Oahe -- a reservoir that begins just north of Pierre, South Dakota and extends nearly to Bismarck, North Dakota. Lake Oahe is federally owned and regulated, as is the land surrounding it. The Lake Oahe crossing is located a half mile above the northern boundary of the SRST reservation. As shown in the image below, ***DAPL does not cross any SRST-owned land or water.***



[¶31] As depicted in the image below, the pipeline "crosses" 90 to 115 feet beneath Lake Oahe along the route of an existing pipeline -- the Northern Border Pipeline. Energy

Transfer selected this crossing location because it would traverse a path that was already disturbed by existing infrastructure, thus minimizing the impact to the environment and reducing the risk of any negative impact to historic resources or cultural features.



[¶32] On July 25, 2016, USACE issued a Final Environmental Assessment for DAPL with a Mitigated Finding of No Significant Impact, concluding that the risk of spill was very low, and authorizing the pipeline’s route under Lake Oahe.

B. Defendants execute an unlawful and violent campaign to cause financial and reputational harm to Energy Transfer and to obstruct construction of DAPL.

[¶33] No later than July 2016, as DAPL neared completion, the Greenpeace Defendants conspired and agreed with Banktrack, Earth First!, Cody Hall, and Krystal Two Bulls to engage in a coordinated campaign to obstruct Energy Transfer’s construction of DAPL and its business operations and to inflict the maximum amount of financial and reputational harm possible upon Energy Transfer.

[¶34] Defendants’ operations against Energy Transfer consisted of three components. First, the Greenpeace Defendants and Banktrack disseminated false statements about Energy Transfer and DAPL to the public for the purpose of raising funds to further their anti-DAPL agenda, inciting thousands of protestors to descend on Lake Oahe to halt construction of DAPL,

and damaging Energy Transfer's reputation. Second, Greenpeace USA and Earth First! organized, funded, and supported unlawful acts of trespass, property destruction, and violence by protestors (including Hall and Two Bulls) to obstruct construction and operation of DAPL. Third, the Greenpeace Defendants and Banktrack disseminated false statements about Energy Transfer and DAPL directly to Energy Transfer's lenders and investors to induce the termination or impairment of these relationships and/or contracts and damage Energy Transfer's reputation.

1. Defendants disseminate malicious false statements about Energy Transfer and DAPL in a misinformation campaign.

[¶35] Beginning in (at the latest) August 2016 and continuing through the months of protests at Lake Oahe, the Greenpeace Defendants and Banktrack commenced large-scale dissemination of false claims about the impacts of the development, construction, and operation of DAPL. These misrepresentations were disseminated via, *inter alia*, mass emails sent by these Defendants to their membership, donor, and other email lists, websites operated by these Defendants, press releases, social media accounts and other means.

[¶36] The Greenpeace Defendants' and Banktrack's specific misrepresentations are set forth in detail in Appendix A to this Complaint. These Defendants' misrepresentations regarding DAPL and Energy Transfer fall into six broad categories: (a) false statements regarding DAPL's path, (b) false statements alleging Energy Transfer "desecrated" cultural resources, (c) false statements regarding the environmental impact of DAPL on water supplies, (d) false statements regarding the impact of DAPL on climate change, (e) false statements regarding Energy Transfer's pre-construction environmental assessments of DAPL project, and (f) false statements regarding Energy Transfer's treatment of anti-DAPL protestors. As will be shown at trial, each of these misrepresentations, individually and collectively, caused substantial damage to Energy Transfer.

a. Defendants misrepresented that DAPL traverses SRST lands.

[¶37] 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 SRST land. This is false. *In fact, the pipeline does not traverse SRST property, at all.* The Lake Oahe crossing is located a half-mile north of the legal boundary of the SRST reservation. Its waters are federally owned and regulated, as is the 1.4 miles of land beneath Lake Oahe where DAPL passes under the waterway. The land adjacent to Lake Oahe, through which the pipeline traverses is likewise federally owned. The facts regarding DAPL's specific path have been publicly known since before construction on the pipeline ever commenced. Yet the Greenpeace Defendants and Banktrack repeatedly disseminated this false claim to thousands upon thousands, if not millions, of people, including their constituents and the general public, as part of their effort to raise funds and to incite anti-DAPL protests.

b. Defendants misrepresented that Energy Transfer desecrated cultural resources.

[¶38] The Greenpeace Defendants and Banktrack also falsely claimed that Energy Transfer "deliberately desecrated documented burial grounds and other culturally important sites" and "destroyed sacred Native Lands" and "religious and other historical sites." Contrary to these claims, DAPL route was meticulously planned to, and does, avoid historically or culturally important sites. In fact, as the Defendants were well aware, Energy Transfer went to extraordinary lengths to ensure cultural resources were not disturbed or destroyed, including by consulting with SRST prior to construction. Indeed, in April 2016, USACE determined -- with the concurrence of the North Dakota State Historic Preservation Officer -- that the pipeline affected no historic properties.

[¶39] Moreover, findings of the North Dakota State Historical Society, released on September 22, 2016, gave lie to any claim that Energy Transfer desecrated historical resources near Lake Oahe. In fact, after conducting its own, independent cultural resource survey of the Lake Oahe corridor and DAPL’s impact on the cultural and historical resources, the North Dakota State Historical Society concluded that there was “no evidence of infractions [by Energy Transfer] . . . with respect to disturbance of human remains or significant sites.”

c. Defendants misrepresented that DAPL would “poison” SRST water supplies.

[¶40] The Greenpeace Defendants and Banktrack falsely alleged DAPL would result in “[m]illions of people los[ing] access to a clean water supply, including the Standing Rock Sioux Tribe.” This is not only false, but impossible. There is consensus among the scientific community that pipelines are the safest method to transport energy products and the risks of any pipeline rupture are minimal. Moreover, regardless of false assessment of the risks to the SRST’s water supply in the future, these Defendants asserted that, as a matter of current fact, residents of North Dakota including the SRST would lose access to clean water upon the construction of DAPL.

[¶41] Again, it is beyond cavil that these assertions are false. DAPL was designed and constructed in strict compliance with federal safety requirements and industry best practices, and utilized the latest safety and protective technologies. Safety features of the pipeline include a technologically advanced corrosion-resistant, external coating over the pipeline; advanced, automated leak detection; and remote-controlled isolation valves to allow rapid sealing in the event of a leak in the pipeline. Energy Transfer employed advanced, low-impact horizontal directional drilling techniques for installation of the pipeline below bodies of water and other sensitive sites. Moreover, DAPL’s construction did not result in any North Dakota resident losing access to clean water, as was asserted.

d. Defendants misrepresented that DAPL would catastrophically alter climate.

[¶42] The Greenpeace Defendants and Banktrack falsely claimed that DAPL is a “climate destroying project” as a result of increased greenhouse emissions purportedly caused by the pipeline. In fact, DAPL has a net positive climate impact because it provides infrastructure to transport oil that would otherwise be carried by fossil fuel-intensive railroads, trucks, or barges, all of which have a higher likelihood of causing environmental damage from spills or leaks. Since DAPL became operational, oil-carrying train traffic within North Dakota has decreased from 12 daily trains, or 1,200 cars, at similar oil production volumes, to 2 trains, or 200 cars, and has thus lowered net fossil-fuel consumption and carbon emissions. As a result, DAPL has had an undeniably positive impact on each of the environmental concerns cited by Defendants.

e. Defendants misrepresented that DAPL was routed and approved without adequate environmental review or consultation.

[¶43] The Greenpeace Defendants further misrepresented that DAPL’s approval “was rushed, lacked proper government-to-government consultation with [SRST],” was “rubber-stamp[ed],” and “approved without adequate environmental reviews.” This too is false, and, in fact, has been rejected twice by the U.S. District Court of the District of Columbia (the “DC Court”) in *Standing Rock Sioux Tribe, et al. v. U.S. Army Corps of Engineers*, 16-cv-1534, a lawsuit challenging the adequacy of the consultation and environmental review process for DAPL.

[¶44] On September 9, 2016, the D.C. Court found that Energy Transfer “prominently considered” the “potential presence of historic properties” in choosing a route for the pipeline:

Using past cultural surveys, the company devised DAPL’s route to account for and avoid sites that had already been identified as potentially eligible for or listed on the National Register of Historic places. With that path in hand, in July 2014, the company purchased rights to a 400-foot corridor along its preliminary route to

conduct extensive new cultural surveys of its own. These surveys eventually covered the entire length of the pipeline in North and South Dakota, and much of Iowa and Illinois. Professionally licensed archaeologists conducted Class II cultural surveys, . . . [and] [i]n some places, . . . intensive Class III cultural surveys. . . .

Where this surveying revealed previously unidentified historic or cultural resources that might be affected, the company mostly chose to reroute. In North Dakota, for example, the cultural surveys found 149 potentially eligible sites, 91 of which had stone features. The pipeline workspace and route was modified to avoid all 91 of these stone features and all but 9 of the other potentially eligible sites. By the time the company finally settled on a construction path, then, the pipeline route had been modified 140 times in North Dakota alone to avoid potential cultural resources. Plans had also been put in place to mitigate any effects on the other 9 sites through coordination with the North Dakota SHPO. All told, the company surveyed nearly twice as many miles in North Dakota as the 357 miles that would eventually be used for the pipeline.

[¶45] The D.C. Court also detailed Energy Transfer's efforts to consult with the SRST, noting that, despite "dozens of attempts to engage Standing Rock," the "Tribe largely refused to engage in consultations." Nonetheless, the D.C. Court also concluded that the USACE -- who provided critical oversight of DAPL planning -- independently consulted with the SRST regarding DAPL's proposed path. In fact, the D.C. Court found that the USACE "exceeded its NHPA obligations" in considering the SRST's concerns:

For example, in response to the Tribe's concerns about burial sites at the James River crossing, the Corps verified that cultural resources indeed were present and instructed Dakota Access to move the site to avoid them. Dakota Access did so. Furthermore, the Corps took numerous trips to Lake Oahe with members of the Tribe to identify sites of cultural significance. [The USACE commander] also met with the Tribe no fewer than four times in the spring of 2016 to discuss their concerns with the pipeline. Ultimately, the Corps concluded that no sites would be affected by the DAPL construction at Lake Oahe, and the State Historic Preservation Officer who had visited that site concurred. The Corps' effort to consult the Tribe on this site -- the place that most clearly implicated the [SRST's] cultural interests -- sufficed under the NHPA. . . . [T]his is not a case about empty gestures. . . . [T]he Corps and the Tribe engaged in meaningful exchanges that in some cases resulted in concrete changes to the pipeline's route.

[¶46] In addition, on June 14, 2017, the D.C. Court rejected the SRST's claim that the USACE's review process was inadequate; finding instead that the USACE amply considered viable alternatives to the final route, the risks of spill, and the environmental impact of any potential spill. The D.C. Court found that the environmental analysis extensively "discuss[ed] DAPL's 'reliability and safety,'" providing "the necessary content" to support its conclusion that the risk of a spill is very low.

[¶47] Further, the D.C. Court held that Energy Transfer's choice of the approved route, rather than an alternative route that traversed closer to Bismarck, North Dakota was not only legal, but prudent because, among other reasons, the proposed Bismarck route would have been co-located with existing utility or pipeline routes for only 3 percent of the total route, and thus posed a substantially greater risk of negative impact to cultural resources and the environment than the selected route.

f. Defendants misrepresented that Energy Transfer used excessive force against peaceful protests.

[¶48] The Greenpeace Defendants and Banktrack also repeatedly published false statements that Energy Transfer "commit[ted] grievous human rights violations" against "peaceful" and "non-violent" anti-DAPL protestors. This too is false. Energy Transfer did not utilize "excessive force" -- let alone commit "human rights violations" -- against anyone. Construction workers and private security officers exercised restraint, and proportionately responded to extreme violence and intentional sabotage directed at Energy Transfer 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 that was violent, but the protestors: "[t]he real brutality [was] committed by violent protestors who use[d] improvised explosive devices to attack police, use[d] hacked information to threaten officers and their families, and use[d] weapons to kill livestock, harming farmers and ranchers."

[¶49] The U.S. District Court for the District of North Dakota likewise described the protests as “mindless and senseless criminal mayhem,” with “protestors attaching themselves to construction equipment operated by Dakota Access; vandalizing and defacing construction equipment; trespassing on privately owned property; obstructing work on the pipeline.” *Dakota Access, LLC v. Archambault*, 2016 WL 5107005, at *2 (D.N.D. Sept. 16, 2016).

2. Defendants organize, fund, and support unlawful acts of trespass, property destruction, and violence.

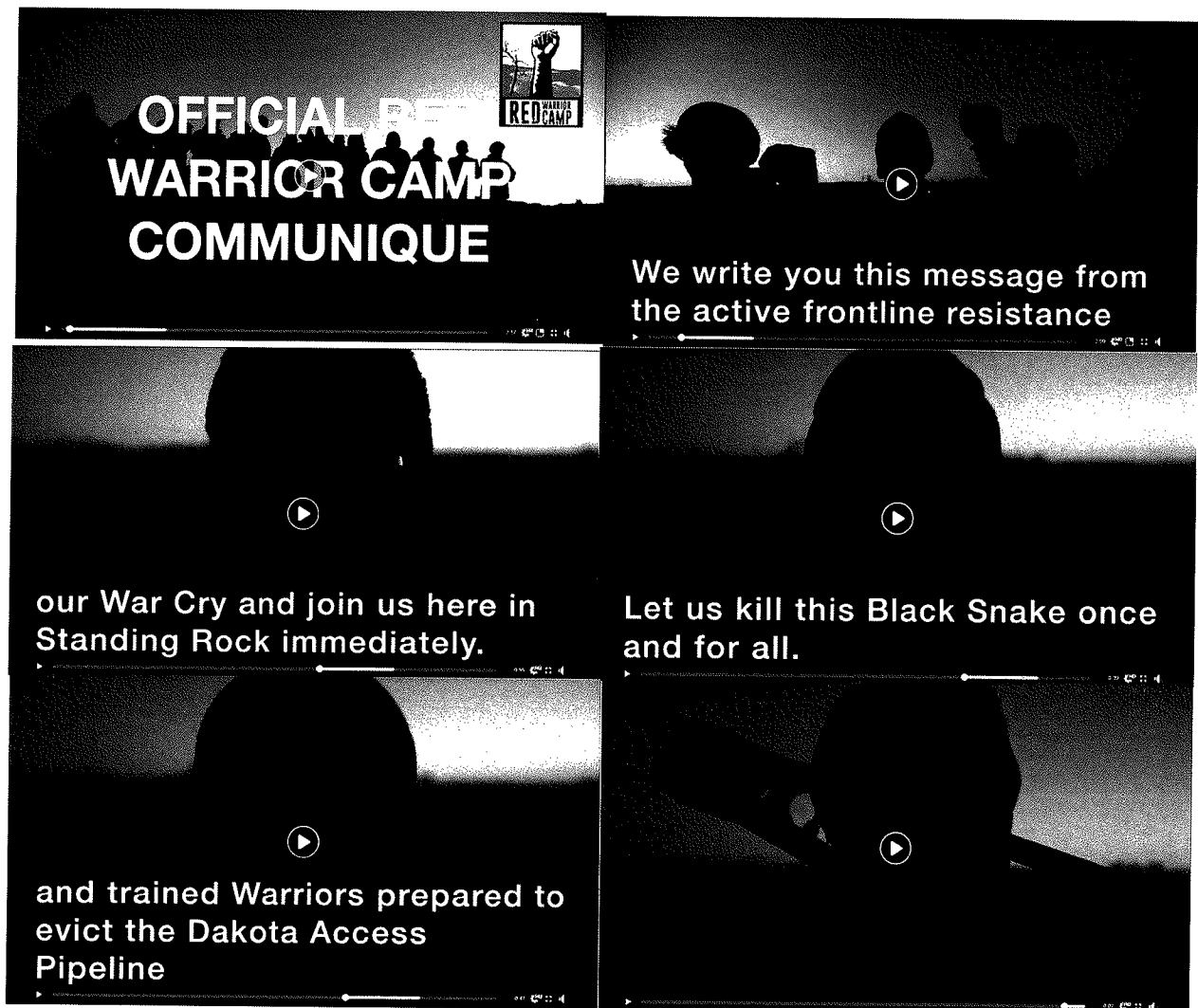
1. Defendants obstruct construction of the pipeline in North Dakota.

[¶50] 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 DAPL. As more and more out-of-state protestors descended on the Lake Oahe crossing, they formed massive encampments on surrounding land. Greenpeace USA sent its “direct action trainers” to the camps to lead “daily direct action trainings,” including instruction in “hard lockdown blockades” and “technical blockades.” Among other things, Greenpeace USA taught protestors how to use U-locks, steel cables, chains, and heavy metal pipes to attach themselves to construction equipment. Protestors proceeded to employ these tactics at DAPL construction sites on an almost daily basis between August and November 2016, causing a total shutdown of pipeline construction.

[¶51] In or around August 2016, Earth First!, in concert with the Greenpeace Defendants, gave \$500,000 in seed money to the most extreme anti-DAPL protestors to form and support “Red Warrior Camp.” Red Warrior Camp was formed to organize the protestors most willing to engage in violence against Energy Transfer employees and DAPL. Greenpeace USA supported Red Warrior Camp by providing direct action training to its members and excusing its own employees from their jobs at Greenpeace to join Red Warrior Camp (while being paid by Greenpeace USA) to protest DAPL as members of Red Warrior Camp. Greenpeace USA also held a donation drive in ten or more cities across North America to raise money and supplies to

support Red Warrior Camp, whose advocacy of violent protest against the pipeline, and demonstrated willingness to engage in violence against Energy Transfer employees, was well known.

[¶52] Red Warrior Camp openly announced its violent intentions and spread its violent message on social media via a series of recruitment videos posted by a purported parent organization styled the “Red Warrior Society.” One video, called an “Official Red Warrior Society Communique,” uses stylized footage of Red Warrior Camp members wearing hoods and masks standing in front of a camera as the sun rises behind them. One masked member holds a large bolt cutter over his shoulder. The video claims to bring a “message from the active front line resistance” and issues a call for “skilled and trained warriors who are prepared to evict the Dakota Access Pipeline.”



[¶53] Another video, entitled an “Official Warrior Communique From the Front Lines” and produced with digital effects imitating a coded military transmission, features a masked Red Warrior Camp member issuing a call to action. The video repeatedly cuts to footage of violent anarchic riots across the world and urges the viewer to “take railroads. Take bridges. Do it! They cannot stop us all!”



[¶54] Another video documents Red Warrior Society’s “Mask Up and Donate” tour of the United States to seek financial support. The video states that the Red Warrior Society is “looking for likeminded warriors” who will “join [them] in [their] fight for water by any means necessary.” The video refers to Red Warrior Society members as “Black Snake Killaz” who eat “rubber bullets for breakfast.”

[¶55] Red Warrior Society also produced documentary-style recruitment and fundraising videos that glorified and celebrated its members’ unlawful acts. One video, titled “The Water Wars Have Begun #NODAPL,” focused on conflicts between members of Red Warrior Camp and law enforcement in North Dakota on October 27, 2016. The video displays images of burning barricades, burning cars, and violent confrontations between masked Red Warrior Camp members law enforcement. A masked and hooded member of Red Warrior Camp states, “This is on the frontlines, right now. This is War.” As Red Warrior Camp burns roads and barricades, a masked member of Red Warrior Camp threatens, “This is nothing compared to what the corporate greed does.”





[¶56] Another video shows an event held at 8th Street and Memorial Highway in Mandan, North Dakota in which members clad in military-style camouflage jackets, black hoods, ski goggles, and bandanas chant “black snake killas” and “no pipeline pigs.” The video also contains images of a mock Thanksgiving feast with a severed pig’s head covered in blood as law enforcement personnel stand nearby.

[¶57] Red Warrior Society’s violent anti-DAPL propaganda was also spread to the public through social media posts, primarily via Facebook. These posts often featured images of masked Red Warrior Society members, calls to arms, and other violent, anti-DAPL imagery.

[¶58] One image stated, “No Compromise, Stand For Water” and depicted masked Red Warrior Society members pointing drawn bows at a Native American wearing a shirt inscribed “DAPL” sitting in front of stacks of money:

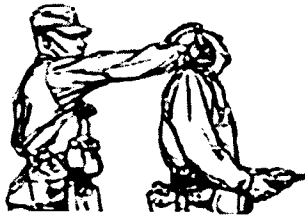
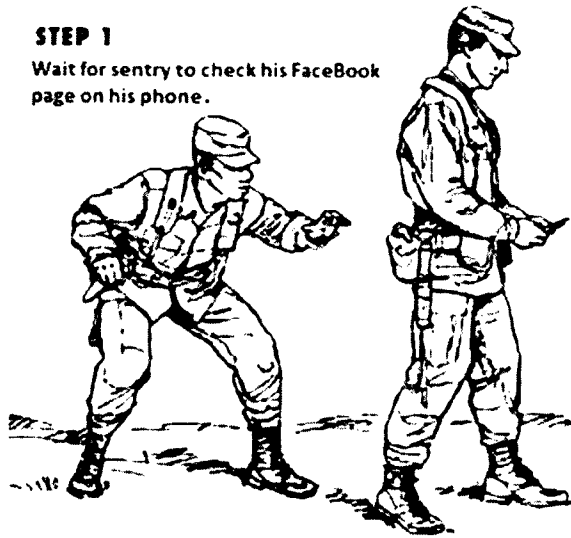


Red Warrior Society posted the image above with text that read: “By Any Means Necessary stand where ever [sic] you are the waters connect us all #EARTHSARMY.”

[¶59] In another Facebook post, Red Warrior Society provided “instructions” for disabling security guards or other law enforcement that stated: “Step 1. Wait for sentry to check his Facebook page on his phone. Step 2. Stab him in the neck” and depicted a man dressed in a military-style uniform being stabbed in the neck.”

STEP 1

Wait for sentry to check his FaceBook page on his phone.



STEP 2

Stab him in the neck.

[¶60] In yet another post, Red Warrior Society posted an image of a masked Red Warrior Society member superimposed on a picture of a group of soldiers, with text that read “Grassroots Warriors Aren’t All Pacifists.”



[¶61] The image above was accompanied with a post from Red Warrior Society that criticized non-violent protestors, who pursued a non-violent, pacifist approach.

Red Warrior Society is full of prayerful people, we pray with our bodies as well as our spirits! Pacifism and those who use it and defend it in a laterally (sic)

violent matter and even a violently physical matter (which makes no sense) need to educate and inform themselves on a diversity of tactics! #realitycheck #warriorup #grassroots #redwarrior #ancestralpride #warriorblood

[¶62] Red Warrior Society also used social media to post “communiqués,” including an October 10, 2016 message asking supporters to hear Red Warrior Society’s “War Cry” and issuing a call for “skilled and trained Warriors prepared to evict the Dakota Access Pipeline” to join the group in North Dakota and help Red Warrior Society “kill this Black Snake once and for all.”

[¶63] Each and every one of these videos and social media posts by Red Warrior Society illustrate Red Warrior Society’s rejection of peaceful political protest, and its embrace and advocacy of violence and intimidation as a means to stopping construction of DAPL. Moreover, the posts served to incite mayhem and violence against Energy Transfer and DAPL.

[¶64] Throughout this period, Defendant Two Bulls served as, in her own words, Red Warrior Society’s “media coordinator,” and would have been responsible for publication of the images above.

[¶65] In addition, on October 12, 2016, in the midst of the violence inflicted on Energy Transfer and DAPL by Red Warrior Society, Two Bulls published an editorial article entitled “The Financial Powers Behind the Dakota Access Pipeline Must Be Confronted” on the website www.commondreams.org that called for “militant direct action” in the “fight against the Dakota Access Pipeline.” In the article, Two Bulls set forth “lessons moving forward” to guide opponents of DAPL, including to:

Make militant direct action the organizing strategy, not just a tool in the toolbox. . . . Movements around the world use confrontational action as a strategy, not just as a tactic. Militant movements in Serbia ousted Milosevic Militant direct action is a strategy we use to build real movements, change power dynamics, shift societies and even remove governments.

A copy of Two Bulls article is attached hereto as Exhibit 1.

[¶66] As set forth below, Two Bulls and her Red Warrior Society cohorts made good on their advocacy for “militant direct action” against Energy Transfer and DAPL and carried out a string of militant attacks on Energy Transfer operations in North Dakota.

2. Hall leads Red Warrior Camp’s violent attacks on DAPL and Energy Transfer.

[¶67] On August 10, 2016, roughly 100 protestors led by Red Warrior Camp and Hall entered DAPL property near Lake Oahe. Upon entering, Red Warrior Camp members sought to obstruct Energy Transfer employees from gaining access to the property. One member -- who openly carried a 12-inch knife on his hip -- threatened Energy Transfer personnel on their way to work that if they tried to enter the site they would get “hurt.” Another member chained himself to a DAPL fence.

[¶68] The following day, August 11, 2016, approximately 200 protestors led by Red Warrior Camp and Hall again raided DAPL property near Lake Oahe, jumping fences, threatening Energy Transfer employees by brandishing knives and other weapons, and further threatening to attack them. Upon entering the property, Red Warrior Camp members destroyed barricades constructed by Energy Transfer to prevent trespassers from entering the construction site. Local police were called to provide protection to Energy Transfer employees.

[¶69] Attacks continued on August 12, 2016 when Red Warrior Camp members again raided Energy Transfer property and threatened violence against Energy Transfer employees on the property and prevented others from entering to perform their jobs. As a result of the persistent and escalating threats of violence against Energy Transfer employees, local police -- who had been called on each of the previous days -- were again called in to provide protection to Energy Transfer employees attempting to evacuate the property. As the police escorted the employees out, Red Warrior Camp members attacked departing cars with rocks and bottles.

[¶70] On September 3, 2016, Red Warrior Camp and Hall led hundreds of protestors in an attack on Energy Transfer's construction crews working on DAPL. Members of Red Warrior Camp stampeded horses, loosed dogs, and drove cars onto federal and private land where construction was occurring. Red Warrior Camp members attacked security personnel with knives, fence posts, flagpoles, and other improvised weapons.

[¶71] Red Warrior Camp members again attacked Energy Transfer employees and property on September 6, 2016.

[¶72] Days later, Defendant Hall was arrested by local police and charged with criminal trespass for his role in the multiple attacks on Energy Transfer and DAPL.

[¶73] Red Warrior Camp attacked again on September 9, 2016. Masked members, armed with knives and hatchets, swarmed a DAPL construction site two miles east of Highway 1806, leaving a wake of destruction in their path.

[¶74] On September 13, 2016, members of Red Warrior Camp again illegally entered a DAPL construction site and used steel pipes to lock themselves to DAPL construction equipment. The next day, September 14, 2016, Red Warrior Camp members trespassed at a DAPL construction site and attached themselves to a DAPL excavator, preventing its use.

3. The Greenpeace Defendants raise funds to support Red Warrior Camp's violent mission.

[¶75] Simultaneous with and after the attacks described above, the Greenpeace Defendants mounted a nationwide campaign to raise money and supplies to support and further Red Warrior Camp's attacks on DAPL and Energy Transfer. During this time, Greenpeace USA organized donation drives in ten cities across the United States to collect supplies to fund, feed, and house Red Warrior Camp members at Lake Oahe. Greenpeace USA directed funds be sent directly to Red Warrior Camp, or were delivered by Greenpeace, notwithstanding Hall's recent

arrest. At this time, Red Warrior Camp's record of violence against Energy Transfer personnel was well known, including within Greenpeace USA, and yet, with full knowledge that their aid to Red Warrior Camp would sustain it and allow its members to perpetrate violence, Greenpeace USA continued its fundraising activities on Red Warrior Camp's behalf. The supplies and funds Greenpeace USA raised directly enabled Red Warrior Camp's violent attacks on DAPL through October and November 2016.

[¶76] Greenpeace USA published an advertisement of its donation drives on its website, <https://www.greenpeace.org/usa/campaign-updates/supply-drive-for-dakota-red-warrior-camp/>:

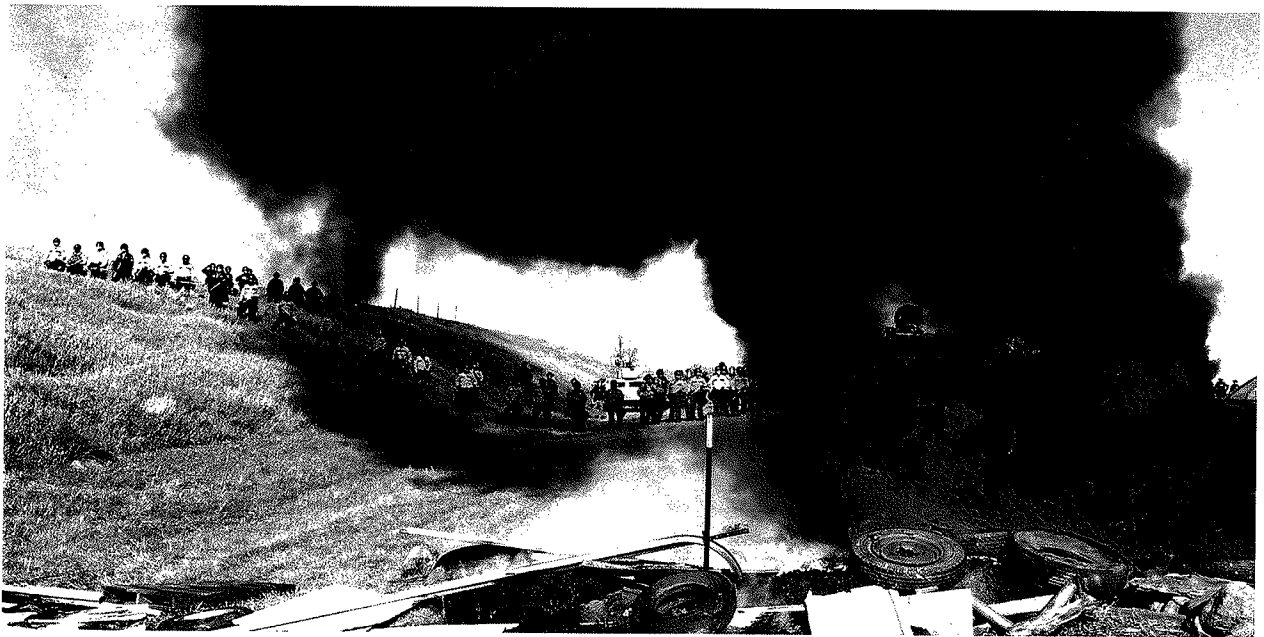
[¶77] During this same time period, Greenpeace USA published Red Warrior Camp's public "call to action" -- authored by defendant Two Bulls -- on its website. This communique urged the public to *"take escalated action to stop the pipeline."* A copy of the communique is attached hereto as Exhibit 2.

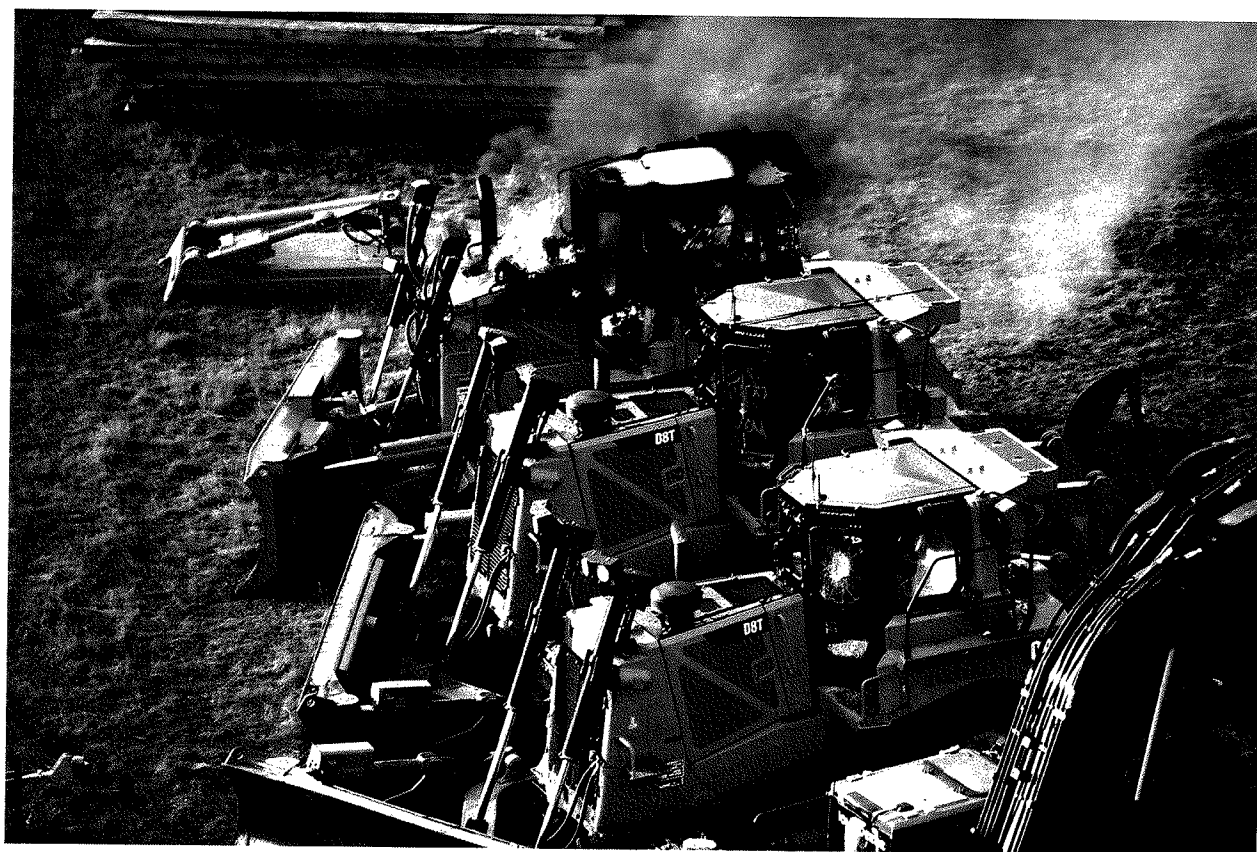
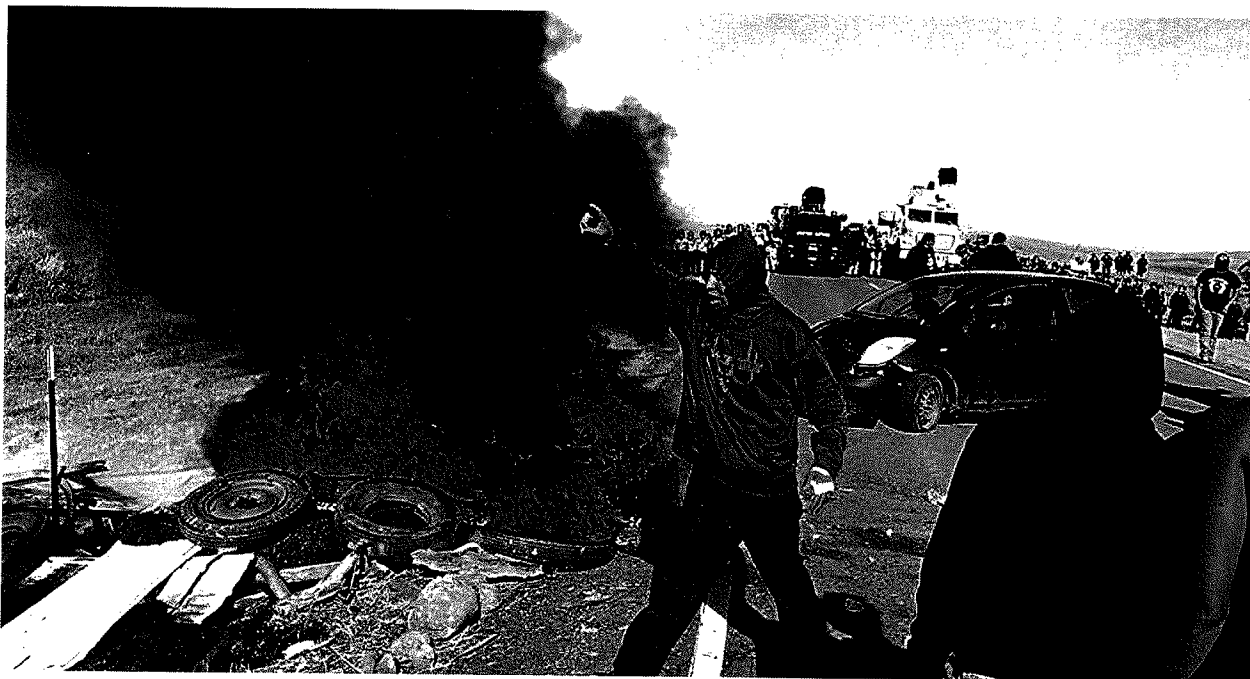
[¶78] Red Warrior Camp continued violent attacks on Energy Transfer and DAPL over the following months. On September 25, 2016, Red Warrior Camp led hundreds of protestors who trespassed on Energy Transfer property west of Highway 6, damaging equipment on site. When security personnel informed Red Warrior Camp members they were trespassing, members brandished knives and assaulted a security guard, dragging the security guard 100 yards. Paramedics were called to treat the security guard for injuries.

[¶79] On October 27, 2016, Red Warrior Camp led protestors who again trespassed on Energy Transfer property near Highway 1806, set up roadblocks to prevent access to the area, and erected an encampment on Energy Transfer property. When law enforcement requested that Red Warrior Camp members remove the barricade and leave Energy Transfer's property, Red Warrior Camp members responded with violence. On this night, Red Warrior Camp members built makeshift barriers between themselves and the police and lit them on fire to prevent law enforcement from evicting them from the site. Red Warrior Camp members threw Molotov cocktails at law enforcement, setting fire to DAPL land and appurtenant structures. Red Warrior Camp members also deliberately set fire to numerous Energy Transfer vehicles and its heavy construction equipment, destroying the property in the process.













[¶80] On November 20, 2016, Red Warrior Camp members gathered at a location known as Backwater Bridge. Red Warrior Camp members tore down barbed wire fencing and illegally entered Energy Transfer property. Armed Red Warrior Camp members attacked police, ignited fires on and near the bridge, and threw grenades and flares at law enforcement officers.

4. **SRST votes to evict Red Warrior Camp, condemning its violence against Energy Transfer and DAPL.**

[¶81] As a result of Red Warrior Camp's violent tactics, on November 1, 2016, the SRST Tribal Council unanimously voted to ask Red Warrior Camp to decamp from the Lake Oahe area out of concern for the safety of non-violent protestors opposing DAPL and because SRST rejected Red Warrior Camp's violent tactics. Red Warrior Camp ignored SRST's request, and not only did not leave the area, but continued to perpetrate violent operations against Energy Transfer and DAPL, rather than adopt the non-violent means of protest that SRST preferred and supported.

3. Defendants target Energy Transfer's business constituents.

[¶82] In addition to the misrepresentations regarding DAPL and Energy Transfer that the Greenpeace Defendants and Banktrack disseminated to the general public and their followers in the anti-fossil fuel and environmental activist communities, these Defendants also mounted a misinformation campaign directly targeted at Energy Transfer's business constituents in an effort to induce the termination of existing contracts or relationships or the impairment of these relationships. In particular, the Greenpeace Defendants and Banktrack focused their efforts on banks financing DAPL and Energy Transfer's other ongoing and prospective infrastructure projects. The specific misrepresentations directed by the Greenpeace Defendants and Banktrack are set forth in detail in Appendix A to the Complaint. These actions, together with those detailed below, were designed to inflict maximum financial harm to Energy Transfer, and succeeded in doing significant damage to the company and its relationship with the financial marketplace.

[¶83] For example, on November 8, 2016, Banktrack and Greenpeace USA sent a joint letter to the Equator Principles Association, a consortium of global banks that includes Energy Transfer lenders DNB, ING, Nordea, and BNP Paribas. The letter falsely alleged that Energy Transfer committed "gross violations of Native land titles," "deliberately desecrated documented burial grounds and other culturally important sites," and violated human rights.

[¶84] In reliance on these misrepresentations, DNB, one of the banks funding DAPL, sold its equity interest in Energy Transfer, totaling approximately \$3 million. DNB also promised to reconsider its participation in the lending facility to DAPL. Greenpeace USA took credit for DNB's divestment of shares in Energy Transfer, but continued to call on DNB to exit its loan to Energy Transfer.

[¶85] Days later, Greenpeace USA published a communique on its website entitled “Another Major Norwegian Investor Divests From Companies Behind Dakota Access Pipeline.” The article stated, falsely, that Energy Transfer was “disregard[ing] Indigenous sovereignty to destroy Native lands and water supply.” The article reiterated calls on DNB and Citibank to halt funding for DAPL, and called on Norwegian funds, such as KLP and Storebrand, to divest its shares in Energy Transfer.

[¶86] Between November 28-30, 2016, Banktrack, GPI, and Greenpeace USA sent joint letters to 17 banks involved in the \$2.5 billion lending facility to DAPL, including DNB, Citigroup, and ING, urging these banks to exit DAPL loan facility based on false claims about the impact of DAPL on the environment and cultural and historical resources.

[¶87] In response to Greenpeace Defendants’ and Banktrack’s misrepresentations, Citibank announced the retention of Foley Hoag LLP, a law firm with human rights expertise, on behalf of the consortium of banks financing DAPL. The consortium retained Foley Hoag to review various matters relating to the permitting process. Over the course of the following four months, Energy Transfer incurred fees and diverted resources to respond to requests for information in connection with Foley Hoag’s investigation.

[¶88] The Greenpeace Defendants and Banktrack continued to disseminate misrepresentations to the banks throughout 2017. In reliance on these misrepresentations, banks terminated their relationships with Energy Transfer. In January 2017, ING divested its shares in the Company.

[¶89] On February 2, 2017, after meeting with Greenpeace Netherlands and Banktrack, who misrepresented that Energy Transfer violated the SRST’s rights, ABN AMRO announced that it would not pursue new business with Energy Transfer. On February 8, 2017, following in-person meetings where Greenpeace USA falsely represented that DAPL “go[es] through the [SRST]’s reservation land,” Nordea announced it would exclude Energy Transfer from all investments.

[¶90] In March 2017, after representatives of Greenpeace Netherlands dug room for and planted 15 meters of super heavy pipe at ING headquarters in protest against DAPL, ING sold its share of the \$2.5 billion credit facility, totaling \$120 million. DNB sold its estimated \$340 million share of DAPL loan, after numerous calls by Greenpeace Defendants and Banktrack to end its participation. Norwegian funds KLP and Storebrand sold their shares in Energy Transfer.

[¶91] On April 5, 2017, BNP Paribas sold its \$120 million share of the loan.

C. Defendants' criminal scheme caused substantial harm in North Dakota.

[¶92] Defendants' campaign against Energy Transfer has had significant contact with, and effects in, North Dakota where Energy Transfer was actively involved in the construction of 357 miles of DAPL.

[¶93] Defendants' unlawful scheme was intended to -- and did -- cause harm to Energy Transfer in North Dakota. First, Greenpeace Defendants' campaign of misinformation was directed at disrupting lawful construction activity near the Lake Oahe crossing in North Dakota. Second, Greenpeace Defendants, Red Warrior Camp, Cody Hall, and Krystal Two Bulls organized, funded, and directed violent activities against Energy Transfer and DAPL at construction sites in North Dakota. Third, Greenpeace Defendants targeted Energy Transfer's business constituents, intending to interfere with Energy Transfer's financing and stop construction in North Dakota.

[¶94] As a result of Defendants' wrongful acts, Energy Transfer suffered substantial damage in North Dakota, including costs of delayed construction, unanticipated costs of professional security services to ward off violent protesters, and costs associated with mitigating Defendants' misinformation campaign in North Dakota.

[¶95] Defendants' wrongful conduct also caused immense harm to the state of North Dakota and its citizens. North Dakota taxpayers were damaged in an amount of more than \$38 million to pay for state and local responses to the protests and related illegal activities. The SRST -- on whose behalf Defendants purported to act -- incurred significant damages to begin major cleanup and restoration in January 2017 to prevent snowmelt from washing tens of thousands of pounds of garbage into the Cannonball and Missouri Rivers and contaminating the very waters the Defendants were purporting to protect. On federal land alone, it took USACE approximately three weeks in March and April 2017, and \$1.1 million of taxpayers' money to clean up after the protesters left 835 dumpsters worth of trash and debris in their wake.

D. Defendants continue organize, fund, and direct unlawful and destructive attacks on Energy Transfer's infrastructure projects.

[¶96] Greenpeace and Earth First! members continue to jointly target Energy Transfer's infrastructure projects. Greenpeace USA and Earth First! members have funded and directed protestors to establish encampments to protest the Mariner East 2 pipeline in Pennsylvania and the Bayou Bridge Pipeline in Louisiana. In 2018, Greenpeace USA hired defendant Charles Brown as a pipeline organizer solely to interfere with Energy Transfer's projects. Greenpeace USA sent Brown and other employees to train hundreds of protestors at both campsites. Using Greenpeace/Earth First! blockade techniques, protestors have stopped construction on an almost daily basis for both projects. Additionally, unknown individuals have used Ecodefense Guide techniques to vandalize bulldozers and other construction equipment at both sites. Earth First! members, through Earth First! Journal, have called for "further sabotage" and a "proliferation of more actions like these."

CAUSES OF ACTION

COUNT I

TRESPASS TO LAND AND CHATTEL (AGAINST THE GREENPEACE DEFENDANTS, RED WARRIOR SOCIETY, HALL, TWO BULLS)

[¶97] Energy Transfer re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶98] As set forth above, the above-named Defendants willfully entered Energy Transfer's property without consent or other privilege.

[¶99] The above-named Defendants funded, trained, directed, and caused others to willfully enter Energy Transfer's property without consent or other privilege.

[¶100] Upon willfully entering Energy Transfer's property without consent or other privilege, the above-named defendants and individuals funded and trained by the above-named Defendants maliciously and wantonly damaged and destroyed Energy Transfer's property, prevented Energy Transfer from using its land and construction equipment, and disrupted Energy Transfer's operations and caused financial harm to Energy Transfer.

[¶101] As a result of the above-named defendants' intentional trespass, Energy Transfer suffered harm and damages in an amount to be proven at trial, including damages for damaged or destroyed construction equipment, fencing and other barrier systems, and land; loss of use of Energy Transfer's land and construction equipment; numerous construction delays; and increased costs of operations.

COUNT II

AIDING AND ABETTING TRESPASS TO LAND AND CHATTEL (AGAINST THE GREENPEACE DEFENDANTS, HALL, TWO BULLS)

[¶102] Energy Transfer re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶103] Individuals funded, trained, directed, and supported by the above-named defendants committed unlawful acts of trespass onto and conversion of Energy Transfer's property.

[¶104] Each of the above-named Defendants knew that these individuals intended to and did commit unlawful acts of trespass and conversion of Energy Transfer's property.

[¶105] Each of the above-named Defendants provided substantial assistance or encouragement to the trespass and conversion of Energy Transfer's property, including by providing funds, personnel, supplies, and training in support of the commission of unlawful acts against Energy Transfer, and the intentional infliction of financial harm resulting therefrom.

[¶106] As a direct, proximate result of each Defendant's substantial assistance and encouragement, Energy Transfer has been injured and suffered damages in an amount to be proven at trial.

COUNT III

CONVERSION (AGAINST THE GREENPEACE DEFENDANTS, RED WARRIOR SOCIETY, HALL, TWO BULLS)

[¶107] Energy Transfer re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶108] As set forth above, Defendants intentionally detained or destroyed Energy Transfer's personal property and wrongfully exercised dominion over Energy Transfer's personal property, in violation of Energy Transfer's property rights and causing it material financial harm.

[¶109] Defendants funded, trained, directed, and caused others to willfully detain or destroy Energy Transfer's personal property and wrongfully exercise dominion over Energy Transfer's personal property, in violation of Energy Transfer's property rights, and causing it material financial harm.

[¶110] As a result of Defendants' unlawful conversion, Energy Transfer suffered harm and damages in an amount to be proven at trial, including damages for damaged or destroyed construction equipment and fencing and other barrier systems; loss of use of Energy Transfer's land and construction equipment; numerous construction delays; and increased costs of construction and operations.

COUNT IV

AIDING AND ABETTING CONVERSION (AGAINST THE GREENPEACE DEFENDANTS, HALL, TWO BULLS)

[¶111] Energy Transfer re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶112] Individuals funded, trained, directed, and supported by the above-named Defendants committed unlawful acts of trespass onto and conversion of Energy Transfer's property.

[¶113] Each of the above-named Defendants knew that these individuals intended to and did commit unlawful acts of trespass and conversion of Energy Transfer's property.

[¶114] Each of the above-named Defendants provided substantial assistance or encouragement to the trespass and conversion of Energy Transfer's property, including by providing funds, personnel, supplies, and training in support of the commission of unlawful acts against Energy Transfer.

[¶115] As a direct, proximate result of each Defendant's substantial assistance and encouragement, Energy Transfer has been injured and suffered damages in an amount to be proven at trial.

COUNT V

DEFAMATION (AGAINST THE GREENPEACE DEFENDANTS)

[¶116] Energy Transfer re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶117] As set forth above, Greenpeace Defendants and Banktrack knowingly and intentionally published false and injurious statements about Energy Transfer, including:

- a. DAPL traverses SRST lands;
- b. DAPL will poison SRST's water supply;
- c. DAPL will catastrophically alter the climate;
- d. DAPL was routed and approved without adequate environmental review or consultation with SRST;
- e. Energy Transfer used excessive and illegal force against peaceful protestors; and
- f. Energy Transfer intentionally desecrated SRST's cultural resources.

[¶118] Greenpeace Defendants and Banktrack published these false and misleading statements in numerous publications on the internet, social media platforms, and in direct emails, letters, telephone communications, and in-person meetings to Energy Transfer's creditors, investors, and other critical market constituents, as well as to the public at large.

[¶119] Greenpeace Defendants and Banktrack made and published the false and defamatory statements set forth herein with actual malice, as such statements were made by Greenpeace Defendants and Banktrack with knowledge of their falsity or reckless disregard for their truth.

[¶120] Greenpeace Defendants and Banktrack published these falsehoods to third-parties and understood and intended that these false statements would have the effect of injuring Energy Transfer's reputation, preventing others from doing business with Energy Transfer, and interfering with Energy Transfer's existing business relationships.

[¶121] Greenpeace Defendants and Banktrack's false statements directly harmed Energy Transfer's business, property, and reputation in an amount to be determined at trial. Energy Transfer's harm includes lost financing; lost profits; increased expenses; legal fees; and monies expended to mitigate the impact of Greenpeace Defendants' and Banktrack's defamation campaign.

COUNT VI
TORTIOUS INTERFERENCE
(AGAINST THE GREENPEACE DEFENDANTS)

[¶122] Energy Transfer re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶123] Energy Transfer had many existing and prospective valid business relationships with third-parties, including with: (i) existing and prospective creditors; (ii) existing and prospective investors; and (iii) existing and prospective long-term capacity transportation shippers.

[¶124] The Greenpeace Defendants knew of Energy Transfer's existing and prospective business relationships with these third-parties.

[¶125] The Greenpeace Defendants intentionally interfered with Energy Transfer's existing and prospective business relationships with these third-parties by disseminating false, misleading, and defamatory statements concerning Energy Transfer's business and DAPL and supporting, funding, and executing trespass and violence on Energy Transfer's land and property. This interference was committed intentionally and without justification or excuse.

[¶126] Energy Transfer had a reasonable expectation of obtaining the benefits of these existing and prospective business relationships. Each of the Defendants was aware of, and intended to cause, this detrimental impact on Energy Transfer's existing and prospective business relationships.

[¶127] The Greenpeace Defendants' tortious interference directly and proximately harmed Energy Transfer's business relationships. Energy Transfer's damages include lost financing, increased cost of capital, increased operating costs, lost revenue, injury to reputation, mitigation costs, and attorney's fees in an amount to be determined at trial.

COUNT VII
CIVIL CONSPIRACY
(AGAINST ALL DEFENDANTS)

[¶128] Energy Transfer re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶129] Each of the Defendants conspired with the others with respect to commit the unlawful acts set forth in Counts I through VI. Defendants shared and agreed upon the same conspiratorial objective, which was to stop construction of DAPL and harm Energy Transfer through the publication and dissemination of false statements concerning Energy Transfer and DAPL; obstruction of DAPL construction by means of trespass, vandalism, violence, property destruction, and other unlawful activity; and interference with Energy Transfer's critical business relationships.

[¶130] Defendants carried out their conspiratorial scheme by the commission of wrongful and overt acts, including publishing and disseminating numerous defamatory statements concerning Energy Transfer and DAPL; organizing, supporting, funding, and executing acts of trespass, vandalism, property destruction, and violence to obstruct construction; and interfering with Energy Transfer's business relationships.

[¶131] As a direct, proximate result of the operation and execution of the conspiracy, Energy Transfer has been injured and suffered damages in an amount to be proven at trial.

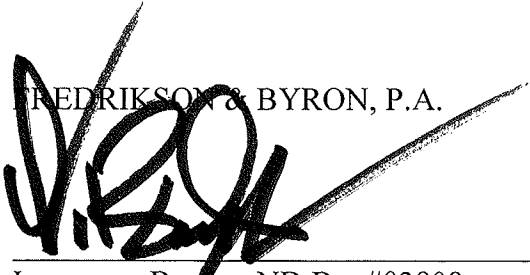
PRAYER FOR RELIEF

[¶132] WHEREFORE, Energy Transfer prays for judgment as set forth below.

- A. For actual, consequential, special, and restitution damages in an amount to be proven at trial.
- B. For pre- and post-judgment and interest as permitted by law.
- C. For such other legal and equitable relief as the Court may deem Energy Transfer is entitled to receive.

DATED this 21st day of February, 2019.

FREDRIKSON & BYRON, P.A.

By: 

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Bismarck, ND 58501-1215
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and Energy Transfer Operating, L.P.*

65960221.1

EXHIBIT 5

STATE OF NORTH DAKOTA
COUNTY OF MORTON

IN DISTRICT COURT
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-)

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.)

SPECIAL VERDICT FORM

This is the Special Verdict form on which the Court gave instructions. You are required to make a special written finding upon each issue of fact. You will note that the questions are to be answered with "Yes" or "No" or other brief answer. The answer to each question must be the unanimous answer of the Jury. The Jury Leader will write the unanimous answer of the Jury in the space provided opposite the question. You will refrain from answering any question that has become moot by your answer to a previous question.

TRESPASS TO LAND

1. Did Defendants trespass on Energy Transfer's land?

Greenpeace Inc. X YES NO

Greenpeace Fund YES ~~YES~~ NO

Greenpeace International _____ YES X _____ NO

If you answered YES as to any of the Defendants on Question 1, then answer Question 2 as to those Defendant(s).

2. **How much do you award to Energy Transfer in compensatory damages for trespass to land?**

Greenpeace Inc. ^{earr} ~~715,000,000~~ ^{Saver} 3,761,034

Greenpeace Fund

Greenpeace International _____

AIDING AND ABETTING TRESPASS TO LAND

3. **Did Defendants aid and abet a third party's trespass to Energy Transfer's land?**

Greenpeace Inc. X YES NO

Greenpeace Fund _____ YES _____ NO

Greenpeace International _____ YES _____ X _____ NO

If you answered YES as to any of the Defendants on Question 3, then answer Question 4 as to those Defendant(s).

4. **How much do you award to Energy Transfer in compensatory damages for aiding and abetting trespass to land?**

Greenpeace Inc. 3,761,034

Greenpeace Fund

Greenpeace International _____

TRESPASS TO CHATTEL

5. Did Defendants commit trespass to chattel against Energy Transfer?

Greenpeace Inc.	<u> X </u> YES	<u> </u> NO
Greenpeace Fund	<u> </u> YES	<u> X </u> NO
Greenpeace International	<u> </u> YES	<u> X </u> NO

If you answered YES as to any of the Defendants on Question 5, then answer Question 6 as to those Defendant(s).

6. How much do you award to Energy Transfer in compensatory damages for trespass to chattel?

Greenpeace Inc.	<u>Corr 7,502,062</u> 3,761,034
Greenpeace Fund	<u> </u>
Greenpeace International	<u> </u>

AIDING AND ABETTING TRESPASS TO CHATTEL

7. Did Defendants aid or abet a third party's trespass to chattel against Energy Transfer?

Greenpeace Inc. X YES NO

Greenpeace Fund _____ YES _____ X _____ NO

Greenpeace International _____ YES _____ ☒ NO

If you answered YES as to any of the Defendants on Question 7, then answer Question 8 as to those Defendant(s).

8. How much do you award to Energy Transfer in compensatory damages for aiding and abetting trespass to chattel?

Greenpeace Inc. 3,761,034

Greenpeace Fund _____

Greenpeace International

CONVERSION

9. Did Defendants commit conversion against Energy Transfer?

Greenpeace Inc.	<u> X </u> YES	<u> </u> NO
Greenpeace Fund	<u> </u> YES	<u> X </u> NO
Greenpeace International	<u> </u> YES	<u> X </u> NO

If you answered YES as to any of the Defendants on Question 9, then answer Question 10 as to those Defendant(s).

10. How much do you award to Energy Transfer in compensatory damages for conversion?

Greenpeace Inc.	<u> 3,761,034 </u>
Greenpeace Fund	<u> </u>
Greenpeace International	<u> </u>

AIDING AND ABETTING CONVERSION

11. Did Defendants aid and abet conversion against Energy Transfer?

Greenpeace Inc.	<u> X </u> YES	<u> </u> NO
Greenpeace Fund	<u> </u> YES	<u> X </u> NO
Greenpeace International	<u> </u> YES	<u> X </u> NO

If you answered YES as to any of the Defendants on Question 11, then answer Question 12 as to those Defendant(s).

12. How much do you award to Energy Transfer in compensatory damages for aiding and abetting conversion?

Greenpeace Inc.	<u> 3,761,034 </u>
Greenpeace Fund	<u> </u>
Greenpeace International	<u> </u>

NUISANCE

13. Did Defendants commit nuisance against Energy Transfer?

Greenpeace Inc.	<u> X </u>	YES	<u> </u>	NO
Greenpeace Fund	<u> </u>	YES	<u> X </u>	NO
Greenpeace International	<u> </u>	YES	<u> X </u>	NO

If you answered YES as to any of the Defendants on Question 13, then answer Question 14 as to those Defendant(s).

14. How much do you award to Energy Transfer in compensatory damages for nuisance?

Greenpeace Inc.	<u> 3,761,034 </u>
Greenpeace Fund	<u> — </u>
Greenpeace International	<u> — </u>

AIDING AND ABETTING NUISANCE

15. Did Defendants aid and abet a third party's nuisance against Energy Transfer?

Greenpeace Inc. X YES NO

Greenpeace Fund _____ YES _____ ~~X~~ NO

Greenpeace International _____ YES _____ ~~_____~~ NO

If you answered YES as to any of the Defendants on Question 15, then answer Question 16 as to those Defendant(s).

16. How much do you award to Energy Transfer in compensatory damages for aiding and abetting nuisance?

Greenpeace Inc. 3,761,034

Greenpeace Fund

Greenpeace International _____

CONSPIRACY

17. Did Defendants commit a conspiracy against Energy Transfer?

Greenpeace Inc. X YES NO

Greenpeace Fund YES X NO

Greenpeace International X YES NO

If you answered YES as to any of the Defendants on Question 17, then answer Question 18 as to those Defendant(s).

18. How much do you award to Energy Transfer in compensatory damages for conspiracy?

Greenpeace Inc. 439,895

Greenpeace Fund —

Greenpeace International 439,895

DEFAMATION

19. Did Defendants defame Energy Transfer with any of the following statements?

Statement 1: Energy Transfer “damag[ed] at least 380 sacred and cultural sites along the DAPL pipeline route.”

Statement 2: Energy Transfer “us[ed] pepper spray and attack dogs on peaceful Water Protectors and pipeline opponents.”

Statement 3: “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.”

Statement 4: “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.”

Statement 5: “DAPL personnel deliberately desecrated documented burial grounds and other culturally important sites.”

Statement 6: “[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.”

Statement 7: “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.”

Statement 8: “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.”

Statement 9: “DAPL personnel deliberately desecrated documented burial grounds and other culturally important sites.”

Greenpeace Inc. X YES _____ NO

➤ If yes, please list the respective number(s) of the statement(s): 1-9

Greenpeace Fund X YES _____ NO

➤ If yes, please list the respective number(s) of the statement(s): 1-9

Greenpeace International X YES _____ NO

➤ If yes, please list the respective number(s) of the statement(s): 1-9

If you answered YES as to any of the Defendants on Question 19, then answer Question 20 as to those Defendant(s).

20. How much do you award to Energy Transfer in compensatory damages for injuries from Defendants' defamation?

Greenpeace Inc. ~~10,450,000~~ 8,326,425

Greenpeace Fund ~~10,450,000~~ 8,326,425

Greenpeace International ~~10,450,000~~ 8,326,425

If you answered YES as to any of the Defendants on Question 19, then answer Question 21 as to those Defendant(s).

21. Did Defendants commit defamation per se against Energy Transfer?

Greenpeace Inc. X YES NO

➤ If yes, please list the respective number(s) of the statement(s): 1-2, 4-6, 8-9

Greenpeace Fund X YES NO

➤ If yes, please list the respective number(s) of the statement(s): 1-2, 4-6, 8-9

Greenpeace International X YES NO

➤ If yes, please list the respective number(s) of the statement(s): 1-2, 4-6, 8-9

If you answered YES as to any of the Defendants on Question 21, then answer Question 22 as to those Defendant(s).

22. How much, in your discretion, do you award in presumed damages for harm to Energy Transfer's reputation?

Greenpeace Inc. 8,324,425

Greenpeace Fund 8,324,425

Greenpeace International 8,324,425

TORTIOUS INTERFERENCE

23. Did Defendants commit tortious interference with business against Energy Transfer?

Greenpeace Inc. X YES _____ NO

Greenpeace Fund X YES _____ NO

Greenpeace International X YES _____ NO

If you answered YES as to any of the Defendants on Question 23, then answer Question 24 as to those Defendant(s).

24. How much do you award to Energy Transfer in compensatory damages for tortious interference?

Greenpeace Inc. 13,352,125

Greenpeace Fund 13,352,125

Greenpeace International 13,352,125

EXEMPLARY DAMAGES

If you awarded compensatory damages to Energy Transfer in any of the following questions, then answer Question 25 as to each Defendant for each claim:

Question Numbers 2 (Trespass to Land), 4 (Aiding and Abetting Trespass to Land), 6 (Trespass to Chattel), 8 (Aiding and Abetting Trespass to Chattel), 10 (Conversion), 12 (Aiding and Abetting Conversion), 14 (Nuisance), 16 (Aiding and Abetting Nuisance), 18 (Civil Conspiracy), 20 (Defamation), 22 (Defamation Per Se), and/or 24 (Tortious Interference).

25. How much do you award to Energy Transfer in exemplary damages?

CLAIM	EXEMPLARY DAMAGES
TRESPASS TO LAND	GREENPEACE INC: \$ <u>\$10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____
AIDING & ABETTING TRESPASS TO LAND	GREENPEACE INC: \$ <u>\$10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____
TRESPASS TO CHATTEL	GREENPEACE INC: \$ <u>\$10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____
AIDING & ABETTING TRESPASS TO CHATTEL	GREENPEACE INC: \$ <u>\$10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____
CONVERSION	GREENPEACE INC: \$ <u>\$10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____

CLAIM	EXEMPLARY DAMAGES
AIDING & ABETTING CONVERSION	GREENPEACE INC: \$ <u>10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____
NUISANCE	GREENPEACE INC: \$ <u>10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____
AIDING & ABETTING NUISANCE	GREENPEACE INC: \$ <u>10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____
CIVIL CONSPIRACY	GREENPEACE INC: \$ <u>10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____
DEFAMATION	GREENPEACE INC: \$ <u>12,500,000</u> GREENPEACE FUND: \$ <u>12,500,000</u> GREENPEACE INTERNATIONAL: \$ <u>12,500,000</u>
DEFAMATION PER SE	GREENPEACE INC: \$ <u>12,500,000</u> GREENPEACE FUND: \$ <u>12,500,000</u> GREENPEACE INTERNATIONAL: \$ <u>12,500,000</u>
TORTIOUS INTERFERENCE	GREENPEACE INC: \$ <u>10,500,000</u> GREENPEACE FUND: \$ <u>10,500,000</u> GREENPEACE INTERNATIONAL: \$ <u>10,500,000</u>

INTEREST ON DAMAGES

26. Should Energy Transfer receive interest on the cumulative damages you have awarded?

_____ YES

~~_____ NO~~

27. What rate of interest should be used?

_____ %

TRESPASS TO LAND

28. Did Defendants trespass on Dakota Access's land?

Greenpeace Inc. YES NO

Greenpeace Fund YES X NO

Greenpeace International _____ YES X NO

If you answered YES as to any of the Defendants on Question 28, then answer Question 29 as to those Defendant(s).

29. How much do you award to Dakota Access in compensatory damages for trespass to land?

Greenpeace Inc. 11/20/2008 5,851,034

Greenpeace Fund

Greenpeace International _____

AIDING AND ABETTING TRESPASS TO LAND

30. Did Defendants aid and abet a third party's trespass to Dakota Access's land?

Greenpeace Inc. X YES _____ NO

Greenpeace Fund _____ YES _____ X NO

Greenpeace International _____ YES _____ ~~X~~ _____ NO

If you answered YES as to any of the Defendants on Question 30, then answer Question 31 as to those Defendant(s).

31. How much do you award to Dakota Access in compensatory damages for aiding and abetting trespass to land?

Greenpeace Inc. Costa Rica 5,851,034

Greenpeace Fund

Greenpeace International

TRESPASS TO CHATTEL

32. Did Defendants commit trespass to chattel against Dakota Access?

Greenpeace Inc. X YES _____ NO

Greenpeace Fund _____ YES X NO

Greenpeace International _____ YES X NO

If you answered YES as to any of the Defendants on Question 32, then answer Question 33 as to those Defendant(s).

33. How much do you award to Dakota Access in compensatory damages for trespass to chattel?

Greenpeace Inc. C² B, 6,188.375

Greenpeace Fund —

Greenpeace International —

AIDING AND ABETTING TRESPASS TO CHATTEL

34. Did Defendants aid or abet a third party's trespass to chattel against Dakota Access?

Greenpeace Inc. YES NO

Greenpeace Fund _____ YES _____ X _____ NO

Greenpeace International _____ YES X _____ NO

If you answered YES as to any of the Defendants on Question 34, then answer Question 35 as to those Defendant(s).

35. How much do you award to Dakota Access in compensatory damages for aiding and abetting trespass to chattel?

Greenpeace Inc. 6,188.375

Greenpeace Fund

Greenpeace International _____

CONVERSION

36. Did Defendants commit conversion against Dakota Access?

Greenpeace Inc.	<u> X </u>	YES	<u> </u>	NO
Greenpeace Fund	<u> </u>	YES	<u> X </u>	NO
Greenpeace International	<u> </u>	YES	<u> X </u>	NO

If you answered YES as to any of the Defendants on Question 36, then answer Question 37 as to those Defendant(s).

37. How much do you award to Dakota Access in compensatory damages for conversion?

Greenpeace Inc.	<u> 6,188,375 </u>
Greenpeace Fund	<u> </u>
Greenpeace International	<u> </u>

AIDING AND ABETTING CONVERSION

38. Did Defendants aid and abet conversion against Dakota Access?

Greenpeace Inc.	<u> X </u>	YES	<u> </u>	NO
Greenpeace Fund	<u> </u>	YES	<u> X </u>	NO
Greenpeace International	<u> </u>	YES	<u> X </u>	NO

If you answered YES as to any of the Defendants on Question 38, then answer Question 39 as to those Defendant(s).

39. How much do you award to Dakota Access in compensatory damages for aiding and abetting conversion?

Greenpeace Inc.	<u> 6,188.375 </u>
Greenpeace Fund	<u> </u>
Greenpeace International	<u> </u>

NUISANCE

40. Did Defendants commit nuisance against Dakota Access?

Greenpeace Inc. X YES NO

Greenpeace Fund YES X NO

Greenpeace International YES X NO

If you answered YES as to any of the Defendants on Question 40, then answer Question 41 as to those Defendant(s).

41. How much do you award to Dakota Access in compensatory damages for nuisance?

Greenpeace Inc. 8,278,375

Greenpeace Fund

Greenpeace International

AIDING AND ABETTING NUISANCE

42. Did Defendants aid and abet a third party's nuisance against Dakota Access?

Greenpeace Inc. X YES NO

Greenpeace Fund YES X NO

Greenpeace International YES X NO

If you answered YES as to any of the Defendants on Question 42, then answer Question 43 as to those Defendant(s).

43. How much do you award to Dakota Access in compensatory damages for aiding and abetting nuisance?

Greenpeace Inc. 8,278,375

Greenpeace Fund

Greenpeace International

CONSPIRACY

44. Did Defendants commit a conspiracy against Dakota Access?

Greenpeace Inc. X YES NO

Greenpeace Fund YES X NO

Greenpeace International X YES NO

If you answered YES as to any of the Defendants on Question 44, then answer Question 45 as to those Defendant(s).

45. How much do you award to Dakota Access in compensatory damages for conspiracy?

Greenpeace Inc. 439,895

Greenpeace Fund —

Greenpeace International 439,895

DEFAMATION

46. Did Defendants defame Dakota Access with any of the following statements?

Statement 1: Dakota Access “damag[ed] at least 380 sacred and cultural sites along the DAPL pipeline route.”

Statement 2: Dakota Access “us[ed] pepper spray and attack dogs on peaceful Water Protectors and pipeline opponents.”

Statement 3: “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.”

Statement 4: “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.”

Statement 5: “DAPL personnel deliberately desecrated documented burial grounds and other culturally important sites.”

Statement 6: “[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 Dakota Access Partners and their private security.”

Statement 7: “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.”

Statement 8: “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.”

Statement 9: “DAPL personnel deliberately desecrated documented burial grounds and other culturally important sites.”

Greenpeace Inc. X YES _____ NO

➤ If yes, please list the respective number(s) of the statement(s): 1-9

Greenpeace Fund X YES _____ NO

➤ If yes, please list the respective number(s) of the statement(s): 1-9

Greenpeace International X YES _____ NO

➤ If yes, please list the respective number(s) of the statement(s): 1-9

If you answered YES as to any of the Defendants on Question 46, then answer Question 47 as to those Defendant(s).

47. How much do you award to Dakota Access in compensatory damages for injuries from Defendants' defamation?

Greenpeace Inc. ~~11,465,849~~ 8,326,425

Greenpeace Fund ~~11,465,849~~ 8,326,425

Greenpeace International ~~11,465,849~~ 8,326,425

TORTIOUS INTERFERENCE

50. Did Defendants commit tortious interference with business against Dakota Access?

Greenpeace Inc. X YES _____ NO

Greenpeace Fund X YES _____ NO

Greenpeace International X YES _____ NO

If you answered YES as to any of the Defendants on Question 50, then answer Question 51 as to those Defendant(s).

51. How much do you award to Dakota Access in compensatory damages for tortious interference?

Greenpeace Inc. 13,352,125

Greenpeace Fund 13,352,125

Greenpeace International 13,352,125

If you answered YES as to any of the Defendants on Question 46, then answer Question 48 as to those Defendant(s).

48. Did Defendants commit defamation per se against Dakota Access?

Greenpeace Inc. X YES ~~NO~~ NO

➤ If yes, please list the respective number(s) of the statement(s): 1-2, 4-6; 8-9

Greenpeace Fund X YES NO

➤ If yes, please list the respective number(s) of the statement(s): 1-2, 4-6, 8-9

Greenpeace International X YES NO

➤ If yes, please list the respective number(s) of the statement(s): 1-2, 4-6, 8-9

If you answered YES as to any of the Defendants on Question 48, then answer Question 49 as to those Defendant(s).

49. How much, in your discretion, do you award in presumed damages for harm to Dakota Access's reputation?

Greenpeace Inc. 8,326,425

Greenpeace Fund 8,326,425

Greenpeace International 8,326,425

EXEMPLARY DAMAGES

If you awarded compensatory damages to Dakota Access in any of the following questions, then answer Question 52 as to each Defendant for each claim:

Question Numbers 29 (Trespass to Land), 31 (Aiding and Abetting Trespass to Land), 33 (Trespass to Chattel), 35 (Aiding and Abetting Trespass to Chattel), 37 (Conversion), 39 (Aiding and Abetting Conversion), 41 (Nuisance), 43 (Aiding and Abetting Nuisance), 45 (Civil Conspiracy), 47 (Defamation), 49 (Defamation Per Se), and/or 51 (Tortious Interference).

52. How much do you award to Dakota Access in exemplary damages?

CLAIM	EXEMPLARY DAMAGES
TRESPASS TO LAND	GREENPEACE INC: \$ <u>10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____
AIDING & ABETTING TRESPASS TO LAND	GREENPEACE INC: \$ <u>10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____
TRESPASS TO CHATTEL	GREENPEACE INC: \$ <u>10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____
AIDING & ABETTING TRESPASS TO CHATTEL	GREENPEACE INC: \$ <u>10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____
CONVERSION	GREENPEACE INC: \$ <u>10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____

CLAIM	EXEMPLARY DAMAGES
AIDING & ABETTING CONVERSION	GREENPEACE INC: \$ <u>10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____
NUISANCE	GREENPEACE INC: \$ <u>10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____
AIDING & ABETTING NUISANCE	GREENPEACE INC: \$ <u>10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____
CIVIL CONSPIRACY	GREENPEACE INC: \$ <u>10,500,000</u> GREENPEACE FUND: \$ _____ GREENPEACE INTERNATIONAL: \$ _____
DEFAMATION	GREENPEACE INC: \$ <u>12,500,000</u> GREENPEACE FUND: \$ <u>12,500,000</u> GREENPEACE INTERNATIONAL: \$ <u>12,500,000</u>
DEFAMATION PER SE	GREENPEACE INC: \$ <u>12,500,000</u> GREENPEACE FUND: \$ <u>12,500,000</u> GREENPEACE INTERNATIONAL: \$ <u>12,500,000</u>
TORTIOUS INTERFERENCE	GREENPEACE INC: \$ <u>10,500,000</u> GREENPEACE FUND: \$ <u>10,500,000</u> GREENPEACE INTERNATIONAL: \$ <u>10,500,000</u>

INTEREST ON DAMAGES

53. **Should Dakota Access receive interest on the cumulative damages you have awarded?**

_____ YES X NO

54. **What rate of interest should be used?**

_____ %

Please have your jury leader sign and date this form and turn it in because you have completed your deliberations.

3-19-25 _____

Date

Jury Leader

EXHIBIT 6

Exhibit C

MARQ WJUNGAARDEN
FLIP SCHÜLLER
PROF. LIESBETH ZEGVELD
MARIEKE VAN EIK
WIL EIKELBOOM
DR. CHANNA SAMKALDEN
TAMARA BURUMA
BONDINE KLOOSTRA
MICHEL PESTMAN
BRECHTJE VOSSENBERG
EVA BEZEM
EMIEL
JURJENS
DR. LISA-MARIE KOMP
BARBARA VAN STRAATEN
TOM DE BOER
DR. KRIT ZEEGERS
FREDERIEKE DÖLLE
ELLES TEN VERGERT
ISA VAN KRIMPEN
DORA BROUWER
THOMAS VAN DER SOMMEN
LARAB MOHAMMAD
SHRUTI TOELSIE

ADVISORS
PROF. HANS ULRICH JESSURUN D'OLIVEIRA
PROF. TIES PRAKKEN

BY REGISTERED MAIL

Energy Transfer LP
8111 Westchester Drive
Dallas, TX 75225
UNITED STATES OF AMERICA

By e-mail: Media@EnergyTransfer.com
InvestorRelations@energytransfer.com

CC:

Amsterdam, 23 July 2024
Our ref. D20231474/EJ/ej
Your ref.
Email: ejurjens@prakkendoliveira.nl

Re: Notice of liability Greenpeace International – Energy Transfer et al.

Dear Sir or Madam,

On behalf of my client Stichting Greenpeace Council, also known as Greenpeace International (hereafter: “GPI”), established in Amsterdam, the Netherlands, I inform you as follows.

This case revolves around one of the most egregious Strategic Lawsuits Against Public Participation (“SLAPP”) that is currently pending worldwide. GPI is a key target in this lawsuit.

In 2016, along with more than 500 other organisations, GPI signed an open letter about a public interest issue, namely the construction of an oil pipeline extending from North Dakota to Illinois, USA. As a result, Energy Transfer LP, Energy Transfer Operating, LP and (more recently) Dakota Access LLC (collectively “ET”), who are involved in this oil pipeline, have been suing GPI in the United States for what it claims are false and defamatory statements and other causes of action. In these cases, ET has been demanding payment of at least 300 million dollars and up to US \$ 900 million of ‘damages’ (as will be detailed further below).

GPI has not harmed ET in any way and has only exercised its right to participate in public debate. However, ET has publicly stated that its aim with these lawsuits is primarily to “send a message” and

say “you can’t do this in the United States”.¹ It has also baselessly accused GPI of being a criminal enterprise.²

GPI is sure it was and is free to exercise its right to freedom of speech in the United States in the way it has done. Unfortunately, legal proceedings in the United States are extremely costly, as ET is well aware. The lawsuits against GPI have resulted in significant costs for GPI, including costs for legal representation, and damage to its reputation as a result of ET’s serious and entirely unfounded public accusations.

In the European Union, there is growing awareness of the threat posed by SLAPPs, including SLAPPs in countries outside the EU. Recently, the Anti-SLAPP Directive entered into effect. In this Directive, it is confirmed that parties established in a EU Member State can claim all damage and costs they have suffered as a result of a SLAPP suit against them in a country outside of the EU before the courts of the country where they are established. GPI intends to do so, and for this purpose I am sending you this letter.

The actions of ET against GPI that are described in this letter are unlawful vis-à-vis GPI under (in any case) Dutch law and through this letter, GPI holds ET liable for all damage it has incurred and will incur (including costs it is incurring and continues to incur) as a result of ET’s actions.

As set out in more detail below, GPI demands that ET (i) immediately withdraw its pending court case against GPI, and (ii) fully accept liability and responsibility for payment of all damage (including costs) GPI has suffered as a result of ET’s actions.

1. Facts: actions ET against GPI and others

GPI is the coordinating body of 25 independent national and regional Greenpeace organisations around the world. These organisations independently develop and carry out their national and/or regional campaign projects, which may fit within a strategic level campaign programme outlined by GPI.³ GPI is a Netherlands-formed non-profit foundation. It is distinct from the two other Greenpeace entities which are defendants in the court cases brought by ET - Greenpeace, Inc. and Greenpeace Fund, Inc. Both entities are located in the United States.

ET owns the largest liquid petroleum and natural gas pipeline system by volume in the United States, spanning nearly 72,000 miles. ET was/is responsible for the development, permitting, construction and operation of the controversial 1,172 mile long Dakota Access oil Pipeline (“DAPL”). In 2016-2017, an Indigenous-led movement protested against the permitting and construction of DAPL.⁴

GPI had nothing to do with these protests. Its engagement in the public debate about the construction of DAPL was signing an open letter to various banks, written by the NGO BankTrack, urging the banks to “halt all further disbursements of the loan and require the project sponsor to stop construction

¹ Greenpeace USA 18 June 2018 “Too Far, Too Often”, <https://www.greenpeace.org/usa/reports/too-far-too-often/>, see reference in footnote 77.

² See for instance the amended complaint in one of the lawsuits: <https://www.greenpeace.org/usa/wp-content/uploads/2018/08/ec7208cc-20180806-etp-amended-complaint.pdf>.

³ See in more detail about GPI’s work: <https://www.greenpeace.org/international/about/structure/>.

⁴ The letter has been published by BankTrack and remains available via: [https://www.banktrack.org/download/letter from 500 organisations to 17 banks on financing dapl/161130 final letter all dapl banks 2.pdf](https://www.banktrack.org/download/letter%20from%20500%20organisations%20to%2017%20banks%20on%20financing%20dapl/161130%20final%20letter%20all%20dapl%20banks%202.pdf)

work until all outstanding issues are resolved to the full satisfaction of the Standing Rock Sioux Tribe.”⁵ This letter, sent on 30 November 2016, was signed by more than 500 organizations, including GPI.

In 2017, ET filed an extremely aggressive and clearly unfounded court case against GPI and several other defendants (including Greenpeace, Inc. and the Greenpeace Fund, Inc) in the federal District Court for the District of North Dakota (the “**Federal Lawsuit**”).⁶ In the Federal Lawsuit, ET demanded damages of “no less than \$ 300 million”, which it demanded to be “trebled” and paid “together with interest, costs and attorney’s fees”.⁷ It alleged, without any factual basis, that GPI and the other defendants were part of a criminal enterprise which purposely aimed to damage ET, as a way to raise funds.

In its publicity campaign about the court case, Energy Transfer accused GPI and the other defendants of “manufactur[ing] and disseminat[ing] false and misleading information”, “fraudulently inducing donations”, “incit[ing], fund[ing] and facilitat[ing] crimes and acts of terrorism” and called GPI and the other defendants “rogue environmental groups (...) who employ a pattern of criminal activity and a campaign of misinformation for purposes of increasing donations and advancing their political or business agendas”.⁸ To be sure: there is no basis in fact for these far-reaching allegations. The sum total of evidence against GPI is that it joined more than 500 other organisations in signing the BankTrack open letter to a number of financial institutions - a letter which caused no proven harm whatsoever to ET.

Kelcy Warren is the founder and former CEO of Energy Transfer LP and current Executive Chairman of that company. He is one of the 500 richest people in the world, with an estimated personal fortune of between 6 and 7 billion dollars.⁹ On 25 August 2017, Kelcy Warren was interviewed on CNBC as CEO of Energy Transfer about the claims in the Federal Lawsuit. The banner accompanying the interview stated: “ENERGY TRANSFER SUES GREENPEACE”. In the interview, Warren referred to Greenpeace and others as “these people” and said “I am not afraid of these people at all”. “Everybody’s afraid of these environmental groups and the fear that it may look wrong if you fight back (...) but what they did to us is wrong, and they’re going to pay for it (...) They’re going to pay for this, they’re going to pay for this”.¹⁰ He explicitly said that “this can’t be allowed to happen” and implied that the Federal Lawsuit was aimed against all acts of public participation by GPI and other groups in the United States. In September 2017, Warren was interviewed by Chris Berg at Valley News Live. In this interview, Warren

⁵ BankTrack 30 November 2016, “Global call on banks to halt loan to Dakota Access Pipeline,” available at: https://www.banktrack.org/article/global_call_on_banks_to_halt_loan_to_dakota_access_pipeline.

⁶ The entity Dakota Access LLC was not a plaintiff in the Federal Lawsuit.

⁷ Energy Transfer Equity, L.P. and Energy Transfer Partners, L.P. v Greenpeace International *et al*, First Amended Complaint Jury Trial Demand, Case No: 1:17-cv-00173.

⁸ Press release Energy Transfer 22 August 2017, “ENERGY TRANSFER FILES FEDERAL LAWSUIT AGAINST GREENPEACE INTERNATIONAL, GREENPEACE INC., GREENPEACE FUND, INC., BANKTRACK AND EARTH FIRST! FOR VIOLATION OF FEDERAL AND STATE RACKETEERING STATUTES”, <https://ir.energytransfer.com/news-releases/news-release-details/energy-transfer-files-federal-lawsuit-against-greenpeace/>.

⁹ In early June, Bloomberg listed Warren as the 399th richest person in the world; Forbes ranked him as the 483rd at the same time. See <https://www.bloomberg.com/billionaires/profiles/kelcy-l-warren/> and <https://www.bloomberg.com/billionaires/profiles/kelcy-l-warren/>.

¹⁰ CNBC Power Lunch 25 August 2017, “We were greatly harmed, lost millions of dollars: Energy Transfer Partners CEO”, <https://www.cnbc.com/video/2017/08/25/we-were-greatly-harmed-lost-millions-of-dollars-energy-transfer-partners-ceo.html>.

acknowledged that ET started the lawsuit against Greenpeace to “send a message”, and not primarily to obtain damages:¹¹

We’ve created this kind of tolerance where, oh my gosh, you can’t challenge these people in fear that someone is going to say you’re not a friend of the environment. That’s nonsense. (...) 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.

Later in the interview, Berg asked Warren: “are you trying to cease funding for organisations like Greenpeace?” Warren answered: “Absolutely”.

On 14 February 2019, the judge presiding over the Federal Lawsuit threw out ET’s case against GPI and others based on a motion to dismiss.¹² The court found the facts advanced by the plaintiffs fell “far short of what is needed” to establish the defendants had formed a criminal enterprise. It dismissed the federal claims alleged, with prejudice, and declined to exercise jurisdiction over the state law claims.¹³

Only a week later (on 21 February 2019) ET filed another case against GPI and others, this time in state court in North Dakota (the “**State Lawsuit**”). ET’s operative complaint asserts a long series of claims—including defamation, tortious interference, and a variety of property torts—against the non-profit Greenpeace defendants (including GPI) in connection with ET’s development and operation of the oil pipeline in North Dakota. In this case, ET seeks close to three hundred million dollars in damages, including alleged reputational damage, and in addition demands for exemplary damages (which can be double the amount of actual damages awarded) and attorney’s fees. There were and are still no grounds whatsoever for any of ET’s claims. However, in North Dakota state law there is no anti-SLAPP statute, and North Dakota has been described as “favorable terrain for these sorts of defamation lawsuits” for that reason.¹⁴

The State Lawsuit has been ongoing before the Morton County District Court over the past five years and is scheduled to go to jury trial in February-March 2025. ET has not been able, and will not ever be able to, show evidence of any tort committed by GPI. However, as ET has also publicly stated, that is not the point of its lawsuits against GPI. The State Lawsuit, like the Federal Lawsuit before it, is a strategic lawsuit aimed against acts of public participation:

When it comes to SLAPP suits like this one, the process itself is the punishment. The burden of time and money to defend constitutionally protected activities from such mischaracterizations

¹¹ Valley News Live 1 September 2017, “Energy Transfer Partners CEO, Kelcy Warren, says DAPL was about a money raise”, <https://www.valleynewslive.com/content/misc/Energy-Transfer-Partners-CEO-Kelcy-Warren-says-DAPL-was-about-a-money-raise-442409553.html>. At the moment of writing, this video appeared to be (possibly temporarily) unavailable to stream.

¹² United States District Court of North Dakota 14 February 2019, Case 1:17-cv-00173-BRW-CRH.

¹³ The full dismissal is available here: <https://www.greenpeace.org/usa/wp-content/uploads/2019/02/ETP.pdf>.

¹⁴ Texas Observer 25 March 2022, “Kelcy Warren’s Defamation Suit has Beto O’Rourke Spoiling For a Fight”, <https://www.texasobserver.org/kelcy-warrens-defamation-suit-has-beto-orourke-spoiling-for-a-fight/>. This article relates to a SLAPP case Warren filed against politician Beto O’Rourke, which was unsuccessful as the Texas courts found O’Rourke’s statements “non-actionable opinions”. Court of Appeals Texas, Austin 9 June 2023, NO. 03-22-00416-CV (Warren/Rourke); confirmed by the Supreme Court of Texas.

is far too high for ordinary citizens and community organizations. As a result, many will decide to keep quiet rather than risk a ruinous judgment.¹⁵

GPI notes that while this letter is specifically concerned with its position, it is of the view that the State Lawsuit clearly qualifies as a SLAPP suit against all defendants, including the other Greenpeace entities that are defendants in the State Lawsuit.

2. Legal protection against SLAPP suits in the Netherlands and Europe

The acts against GPI by ET as set out above are unlawful and qualify as an abuse of rights under Dutch civil law (Articles 6:162 and 3:13 of the Dutch Civil Code or (“DCC”)), read in conjunction with Articles 8 and 10 of the European Convention of Human Rights (“ECHR”), EU Directive 2024/1069 on protecting targets of SLAPPS, and Article 11 of the EU Charter of Fundamental Rights (“Charter”), as well as various Recommendations set out below). GPI therefore has a cause of action before the courts of the Netherlands.

GPI is established in the Netherlands, which is part of the European Union and the Council of Europe. Freedom of expression, which includes the right of the public to receive information, is guaranteed by *inter alia* Article 10 ECHR and Article 11 of the Charter. Article 8 ECHR guarantees the right to reputation, which can come into play for targets of SLAPP cases. The State of the Netherlands has a positive obligation to secure the enjoyment of the rights enshrined in (amongst others) Article 8 and 10 ECHR to everyone within its jurisdiction, and to protect this right from any infringement, including by private parties.¹⁶

Dutch civil law furthermore prohibits unlawful acts, meaning “an infringement of a right and an act or omission in violation of a duty imposed by law or of what according to unwritten law has to be regarded as proper social conduct” (Article 6:162(1) and (2) DCC). In addition, Dutch law prohibits parties from abusing their rights, including (but not limited to) by exercising a right with the sole aim of harming another party (Article 3:13 DCC).

Over the past years, SLAPPs have been recognized within the European Union as a significant threat to freedom of expression and – by extension – to democracy.¹⁷ The European Commission underlined in a Recommendation that SLAPPs can be aimed at “exhaust[ing] (...) financial and other resources” of journalists, NGOs and human rights defenders and noted: “The length of procedures, the financial pressure and the threat of criminal sanctions constitute powerful tools to intimidate and silence critical voices” (considerations, under 12).¹⁸ It recommended Member States to ensure targets of SLAPPs should be able to obtain compensation for all damage and costs incurred as a result of the SLAPP.

The European Parliament noted with concern in 2021 that SLAPPs “may also be brought against watchdogs within the Union by actors in third countries and before courts in third countries” – “third

¹⁵ Greenpeace USA 6 June 2024, “The Story of Energy Transfer’s \$300 Million Lawsuit, and Why It Matters”, <https://www.greenpeace.org/usa/energy-transfer-lawsuit-story/>.

¹⁶ Human Rights Comment by the Council of Europe Commissioner for Human Rights 27 October 2020, “Time to take action against SLAPPs” (Strategic Lawsuits against Public Participation).

¹⁷ See for instance ECtHR 15 March 2022, 2840/10 (*OOO Memo/Russia*), par. 43 and 23.

¹⁸ Commission Recommendation of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”).

countries' meaning countries which are not EU Member States.¹⁹ The Committee of Ministers of the Council of Europe in early April 2024 reiterated this. It recommended Member States to provide rules to ensure that SLAPP targets domiciled within a Council of Europe country are able to obtain compensation of damages and costs incurred in connection with a SLAPP in a third country before the court of the place where they are domiciled.²⁰

On 11 April 2024 Directive 2024/1069 on protecting targets of SLAPPs (the "**Directive**") came into effect.²¹ The Directive aims to provide safeguards to journalists, human rights defenders and other persons engaged in public participation against SLAPPs, which are defined in the Directive as "manifestly unfounded claims or abusive court proceedings in civil matters with cross-border implications brought against natural and legal persons on account of their engagement in public participation" (art. 1 Directive).

Whether a court case qualifies as a SLAPP will depend on the facts and circumstances of the case, and the Directive expressly does not provide an exhaustive list of criteria, which must be satisfied for a court case to qualify as a SLAPP. Rather, it provides a non-exhaustive list of indications that a court case could be qualified as a SLAPP, including but not limited to the following indications (drawn from the recitals of the Directive):

1. The case is "initiated by powerful entities, for example (...) corporations (...) in an attempt to silence public debate".
2. The case involves "an imbalance of power between the parties, with the claimant having a more powerful financial or political position than the defendants".
3. If an imbalance of power is present, this "significantly increases the harmful effects as well as the chilling effect of court proceedings against public participation".
4. There are "litigation tactics deployed by the claimant and used in bad faith, such as tactics relating to the choice of jurisdiction, relying on one or more fully or partially unfounded claims, making excessive claims, the use of delaying tactics or deciding to discontinue cases at a later stage of the proceedings, initiating multiple proceedings on similar matters, and incurring disproportionate costs for the defendant in the proceedings."
5. In that context, "[t]he past conduct of the claimant and, in particular, any history of legal intimidation should also be considered when determining whether the court proceedings are abusive in nature. Those litigation tactics, which are often combined with various forms of intimidation, harassment or threats before or during the proceedings, are used by the claimant for purposes other than gaining access to justice or genuinely exercising a right and are aimed at achieving a chilling effect on public participation in relation to the matter at stake".

¹⁹ European Parliament resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society (2021/2036(INI)).

²⁰ Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs) – regardless of the domicile of the party which filed the SLAPP suit.

²¹ Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation').

The Directive expressly recognizes the special threat posed by third-country SLAPPs, meaning cases brought against defendants in the European Union in a jurisdiction outside of the European Union, and the need for protection against such cases (considerations Directive, 43):

In the cross-border context, it is also important to recognise the threat of SLAPPs in third-countries targeting journalists, human rights defenders and other persons engaged in public participation who are domiciled in the Union. SLAPPs in third-countries may involve excessive damages being awarded against persons engaged in public participation. Court proceedings in third-countries are more complex and costly for the targets of SLAPPs. To protect democracy and the right to freedom of expression and information in the Union and to avoid the safeguards provided by this Directive being undermined by recourse to court proceedings in other jurisdictions, it is important to provide protection against manifestly unfounded claims and abusive court proceedings against public participation in third-countries.

One form of such protection is that Member States are obliged under the Directive to “ensure that the recognition and enforcement of a third-country judgment in court proceedings against public participation by a natural or legal person domiciled in a Member State is refused, if those proceedings are considered manifestly unfounded or abusive under the law of the Member State in which such recognition or enforcement is sought”.

In addition, Article 17 of the Directive establishes the right of SLAPP targets to seek compensation for all damage and costs they have incurred as a result of third-country SLAPPs before the courts or tribunals of their domicile. It provides that when a SLAPP has been brought by “a claimant domiciled outside the Union”, “in a court or tribunal of a third-country”, “against a legal person domiciled in a Member State”, that legal person may seek, in the courts or tribunals of the place where it is domiciled, compensation for the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third country. Under the facts here, GPI has the right to demand such compensation before the competent court in the Netherlands.

This right exists irrespective of whether a decision has been rendered in the case pending in the third country (recital 44 of the Directive, emphasis added):

This Directive creates a new special ground of jurisdiction in order to ensure that targets of SLAPPs domiciled in the Union have an efficient remedy available in the Union against abusive court proceedings against public participation brought in a court or tribunal of a third-country by a claimant domiciled outside the Union. It should apply irrespective of a decision having been rendered or of a decision being final, as targets of SLAPPs can suffer damage and incur costs from the start of court proceedings and possibly even without any decision being rendered, such as in the case of a withdrawal of the claim.

ET’s acts against GPI as set out above are unlawful and qualify as an abuse of rights under Dutch civil law (Articles 6:162 and 3:13 DCC, read in conjunction with Articles 8 and 10 ECHR, the Directive and Article 11 of the Charter). GPI has a cause of action against ET before the courts of the Netherlands.

3. Notice of Liability

Under reference to the criteria set out in the Directive and other sources of law, it is beyond doubt that the lawsuits ET has pursued against GPI qualify as SLAPPs:

1. The cases were initiated by ET in an attempt to silence public debate and public participation. There is objective evidence for this aim in light of the public comments of Warren, who has

stated the aim of the case is to 'make Greenpeace pay' including by aiming to 'cease its funding'. Additionally, he stated that the 'primary objective' of the case is: "to send a message, you can't do this, this is unlawful and it's not going to be tolerated in the United States". In relation to GPI, this means signing a letter in the context of public debate should apparently 'not be tolerated in the United States'.

2. There is an imbalance of power between the parties, as ET has considerably greater financial resources than GPI. This imbalance of power increases the harm and creates a chilling effect on public participation.
3. ET has deployed unjustified litigation tactics, *inter alia* by relying on entirely unfounded claims (as shown by the dismissal of the Federal Lawsuit), repeatedly starting court cases against GPI despite a lack of credible evidence against it, doing so in a jurisdiction that lacks an anti-SLAPP law, as well as making excessive claims for damages (hundreds of millions of dollars). As a result of these litigation tactics GPI has incurred disproportionate costs, which is very likely to be the aim of ET.
4. In addition to starting the Federal Lawsuit and the State Lawsuit against GPI, ET has engaged in a very aggressive PR campaign against GPI in which it has accused GPI, without any factual basis, of serious criminal misconduct. This has harmed the reputation of GPI, which is protected by Article 8 ECHR.

As a result of these acts, GPI has suffered and continues to suffer significant damage in its domicile of Amsterdam, the Netherlands. This damage includes but is not limited to:

1. significant legal fees that GPI has been forced to incur as a result of having to defend the successive lawsuits in the United States;
2. various other costs directly linked to the cases in the United States, including but not limited to travel, lodging, consultancies and employment costs for current and former GPI employees;
3. the significant amount of time that some GPI employees have had to invest in dealing with this case over the years while not campaigning for a "green and peaceful future", which is GPI's core mission;²²
4. reputational damage as a result of the clearly unfounded, publicly stated allegations of ET against GPI of *inter alia* involvement in 'terrorism' and 'criminal activity'.

In addition, GPI continues to suffer significant damage as a result of ET's actions, in particular because ET chooses to continue the State Lawsuit (a clear example of a SLAPP case) against GPI.

By way of this letter GPI provides notice that it holds each of the ET entities jointly and severally liable for all damage it suffers as a result of their actions described herein. Insofar as relevant, this letter interrupts any applicable statute of limitations.

The ET entities are bound to, and still can, limit this damage. Therefore, I hereby summon the ET entities to confirm to me in writing by 14 August 2024 that they shall:

- I. **immediately withdraw all demands against GPI** in the State Lawsuit, and take no further legal actions against GPI;
- II. **unreservedly accept liability and responsibility for payment of all damage (including costs)** GPI has suffered as a result of ET's actions.

²² Greenpeace International "About Us", <https://www.greenpeace.org/international/about/>.

If all ET entities unreservedly and timely agree with these demands, GPI is willing to enter into negotiations on the amount of damages ET must pay GPI and the modalities of such payments.

GPI reserves all rights.

Kind regards,



Emiel Jurjens

EXHIBIT 7

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

ENERGY TRANSFER LP, <i>et al.</i> ,	)	Case No.: 30-2019-CV-00180
	)	
Plaintiffs,	)	BRIEF IN SUPPORT OF GREENPEACE
	)	INTERNATIONAL’S MOTION FOR
v.	)	SUMMARY JUDGMENT ON ALL
	)	COUNTS
GREENPEACE INTERNATIONAL, <i>et</i>	)	
<i>al.</i> ,	)	
	)	
Defendants.	)	

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[¶1] Despite the passage of almost seven years since the events alleged, and more than three years of litigation discovery, Plaintiffs have uncovered no evidence to substantiate their claims against Greenpeace International (“International”). Plaintiffs’ vague assertions regarding International’s involvement in the Standing Rock protests are inadequate. In fact, International is located outside the United States, and its employees never set foot in North Dakota in connection with the Standing Rock protests, did not provide financial or in-kind support, or otherwise have any meaningful involvement in the Standing Rock protests. For these reasons, summary judgment is proper as to Counts I through VI and IX (Trespass to Land and Chattels, Conversion, Nuisance, Aiding and Abetting, and Conspiracy) of Plaintiffs’ Second Amended Complaint (“SAC”).

[¶2] With regard to Count VIII (Tortious Interference) and Count VII (Defamation), the sum total of evidence with regard to International is that it joined, along with more than 500 other organizations, in signing **one letter** sent by a third party to a number of financial institutions, including those providing construction loan financing for the Dakota Access Pipeline (“DAPL”). Furthermore, there is no indication that any DAPL lender or potential investor (1) saw this one letter, (2) read this one letter, or (3) made any decision based on this one letter that caused harm to Plaintiffs. International also re-posted a DAPL-related statement originally published by Greenpeace, Inc.—but this statement cannot have caused any of Plaintiffs’ claimed interference damages, because it was made months after the time when Plaintiffs apparently intended to refinance their loan.

[¶3] Finally, there is no evidence supporting any award of exemplary or punitive damages against International.

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[¶4] Because Plaintiffs cannot carry their burden to establish facts supporting essential elements of their claims, International is entitled to summary judgment on all claims alleged, including Plaintiffs’ request for exemplary damages.

I. UNDISPUTED MATERIAL FACTS

A. The Greenpeace Defendants Are Separate Entities

[¶5] International is a Netherlands-formed non-profit foundation. It is distinct from the other Greenpeace entity defendants, Greenpeace, Inc. and Greenpeace Fund, Inc., which are both located in the United States. *See* Ex. 1, Deposition of Mads Christensen (“Christensen Dep.”) 18:6-8 (explaining that International is the “coordinating body” of “25 independent Greenpeace organizations across the world”); Ex. 2, Deposition of Njambi Good 38:12-19 (stating that Greenpeace, Inc. and International are “different organizations”).¹ Indeed, this Court has recognized that the Greenpeace entity defendants are distinct entities and not the “alter ego” of one another. *See* Dkt. 2821, Mem. Opinion on Mot. Am. Compl., ¶¶ 10-14.

[¶6] A few particular differences are worth noting. International has a different executive director than Greenpeace, Inc. and Greenpeace Fund, Inc., and has no say as to the appointment or removal of those entities’ executive director. *See* Ex. 1, Christensen Dep. 20:25-22:1. International, Greenpeace, Inc., and Greenpeace Fund, Inc. each has a different board. *See id.* 23:11-14; Ex. 3, Deposition of Annie Leonard 18:10-14. As “coordinating body,” International develops top-line strategy for the Greenpeace entities but has no power to enforce implementation of that strategy, including individual protest activities, by the regional organizations. Ex. 1,

¹ All exhibits are to the Declaration of Everett Jack submitted with this motion.

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Christensen Dep. 35:10-36:16.

B. International Had No Involvement in the On-the-Ground Activities in North Dakota

[¶7] Plaintiffs accuse all “Greenpeace Defendants,” including International, of committing a host of allegedly tortious actions in connection with protests against DAPL. *See generally* Second Am. Compl. (“SAC). But “Greenpeace International was not involved in [the anti-DAPL] work that Greenpeace Inc was conducting at the time.” Ex. 1, Christensen Dep. 55:16-18. For example, International did not send anyone to Standing Rock, did not know what activities Greenpeace, Inc. had authorized at Standing Rock, and did not itself conduct any fundraising or supply drives focused on supporting the protests. *Id.* 120:21-121:4.

[¶8] Plaintiffs have never identified any evidence that International played any role in the conduct alleged in the property tort claims (Counts I-VI and IX), either in its own capacity, as an aider and abettor, or as a co-conspirator. Plaintiffs’ evidence merely seeks to lump International in with the activities of the other defendants, *see, e.g.*, Ex. 4, Deposition of Michael Futch (Oct. 25, 2023), 180:7-15, 189:19-190:21, 238:17-239:7, but Plaintiffs cannot describe any actions **by International** related in any way to the allegations made in each of these Counts. Further, Plaintiffs have not identified any agreement between International and the other Greenpeace entity defendants regarding any actions taken by the other defendants in connection with their anti-DAPL activities.

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C. International’s Only “Anti-DAPL” Activity Was Signing an Open Letter Along with Over 500 Other Organizations and Re-Posting a Statement by Greenpeace, Inc.

[¶9] International’s only involvement with any “anti-DAPL” activity was its endorsement of three of the challenged statements regarding DAPL: Statements 1, 30, and 31. SAC, Second Am. App’x A.

[¶10] First, International co-signed, along with more than 500 other organizations, an open letter drafted and sent by BankTrack on November 30, 2016 calling on banks to halt the financing of DAPL (the “BankTrack Letter”). Ex. 5. BankTrack is an international organization that urges commercial banks not to finance projects that have adverse climate impacts, including fossil fuel projects. See BankTrack, 2022 Annual Report at 4, available at https://www.banktrack.org/download/banktrack_annual_report_2022/banktrack_annual_report_2022_1.pdf. The BankTrack Letter contains two allegedly defamatory statements:

- “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.” SAC, Second Am. App’x A, Statement 30.
- “DAPL personnel deliberately desecrated documented burial grounds and other culturally important sites.” *Id.*, Statement 31.

[¶11] Second, on June 18, 2018, International published a version of a news release originally posted by Greenpeace, Inc. that contains an allegedly defamatory statement (the “News Release”). Ex. 6, Deposition of Trillia Fidei-Bagwell (“Fidei-Bagwell Dep.”) Ex. 1474. The challenged statement in the News Release is that Energy Transfer “damag[ed] at least 380 sacred and cultural

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sites along the DAPL pipeline route.”² SAC, Second Am. App’x A, Statement 1.

D. Plaintiffs Have Provided No Evidence Linking Any of the Statements International Endorsed to Any Claimed Interference Damage

[¶12] Plaintiffs vaguely assert that International’s endorsement of these three statements interfered in two ways. Plaintiffs claim that statements in the BankTrack Letter and the News Release: (1) caused some of the banks that participated in the loan for the construction of the DAPL project (the “Construction Loan”) to assign their interest to other banks, and (2) caused investors to lose interest and/or refuse participation in the issuance of bonds to refinance the Construction Loan (“Bond Refinancing”) on terms acceptable to the Plaintiffs. *See* SAC ¶¶ 79-87 (discussing loan divestment theory); Ex. 10, Supplemental Expert Report of David M. Leathers (“Leathers Suppl. Rep.”) ¶¶ 54-55 (discussing bond refinancing theory). However, as discussed below, Plaintiffs can provide no evidence whatsoever that any one of the banks involved with either the Construction Loan or the Bond Refinancing even saw, read, or took any action based on the BankTrack Letter or the News Release.

1. Plaintiffs Base Their Claim on Two Transactions

[¶13] ***The Construction Loan.*** To finance the construction of the DAPL project, Plaintiff Dakota Access, LLC and its affiliate Energy Transfer Crude Oil Company, LLC (“ETCOC”) entered the \$2.5 billion Construction Loan with a group of seventeen creditors on August 2, 2016. Ex. 11 (ISB_0000203). Under the terms of the Construction Loan, each of the lenders had the right to

² International also participated in the anti-DAPL movement in at least two other ways, neither of which is at issue in this case. In December 2016, International sent a letter to Citigroup regarding DAPL. Ex. 7, Christensen Dep. Ex. 1729. International also funded the “Standing Truth” project, Greenpeace, Inc.’s effort aimed at responding to Plaintiffs’ lawsuits, in 2018—well after the events alleged. Ex. 8, Fidei-Bagwell Dep. 98:2-14, 133:9-17; Ex. 9, Fidei-Bagwell Dep. Ex. 1463.

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assign their interest in the Construction Loan at any time with the consent of Dakota Access and ETCOC, unless the assignee was another lender, in which case consent was not required. *Id.* at ISB_0000306, § 12.15(b)(i). Plaintiffs contend that unspecified statements by unspecified defendants somehow caused four creditors—BayernLB; BNP Paribas; DNB Markets, Inc. (“DNB”); and ING Capital LLC (“ING”)—to exercise this right and sell their shares of the Construction Loan to new creditors.³ Ex. 10, Leathers Suppl. Rep. ¶ 43. Missing, however, is any evidence from the four creditors themselves supporting this purely speculative assertion.

[¶14] ***The Bond Refinancing.*** After completing DAPL, Plaintiffs refinanced the Construction Loan in 2019. Lenders underwrote the bonds and marketed them to institutional investors like pension funds. *See* Ex. 12, Rule 30(b)(6) Deposition of Ashton Hayse (“Hayse Dep.”) 177:11-178:11. Plaintiffs assert they would have ***preferred*** to conduct the Bond Refinancing earlier than 2019. *See* Ex. 10, Leathers Suppl. Rep. ¶¶ 54-55. Plaintiffs contend that certain unspecified statements caused lenders and institutional investors to lose interest and/or refuse participation in the Bond Refinancing in August 2017 or February 2018, causing Plaintiffs to incur additional financing charges and less favorable terms when they completed the Bond Refinancing in 2019. *Id.* ¶¶ 45-55. Again, there is no evidence to support Plaintiffs’ speculative contention.

2. There Is No Evidence That the Three Statements International Endorsed Affected Either the Construction Loan or the Bond Refinancing

[¶15] Despite these bald assertions, Plaintiffs admit they cannot identify even one lender or institutional investor that was aware of the BankTrack Letter or of the News Release, let alone that

³ Plaintiffs’ discovery responses also list Intesa Sanpaolo S.p.A and ABN AMRO, but neither bank exited the Construction Loan.

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read them or relied on any statement in them to make any decisions regarding their participation in either the Construction Loan or the Bond Refinancing.

[¶16] **Written Discovery Answers.** In Plaintiffs’ discovery responses, they provide no facts or documents reflecting that any of the Construction Loan lenders took any actions based upon any statement by International. *E.g.*, Ex. 13, Pl. Dakota Access LLC’s Am. Resps. First Set of Interrogs. (Feb. 15, 2022), Resp. No. 8.

[¶17] **Plaintiffs’ Rule 30(b)(6) Designees.** Plaintiffs’ corporate designees likewise could not identify any fact or document supporting the claim that the banks or investors involved in either the Construction Loan or the Bond Refinancing actually saw, read, or made any decision based upon any statement by International, let alone the contents of the BankTrack Letter or the News Release. For example, Plaintiffs’ designee on their tortious interference claim acknowledged that he “can’t get into the head of the person” who made investing decisions at the banks. *See* Ex. 12, Hayse Dep. 167:10-11; *see also id.* 169:2-7 (“Q. Would you agree that we can’t get in the head of PNP [sic] Paribas about how they made a decision whether or not to assign their interest in the construction loan? . . . A. Yeah.”).

[¶18] This witness also could not provide any facts suggesting that any statement by International affected any lender’s or investor’s decision-making. *See id.* 113:5-7, 114:6 (“Q. So in the course of the conversations you had with these potential investors, do you recall any specific mention of Greenpeace? . . . A. I don’t remember.”). Plaintiffs’ other corporate designee similarly testified that he did not know of any individuals who worked at any of the banks ever reviewed any Greenpeace statement about Energy Transfer or DAPL. *See* Ex. 14, Deposition of Michael Futch (Feb. 15, 2024) (“Feb. 15 Futch Dep.”) 103:1-15.

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[¶19] ***Plaintiffs’ Expert Reports.*** Plaintiffs’ expert reports likewise fail to identify any evidence that any of the lenders or financial institutions involved with the Construction Loan or the Bond Refinancing ever saw, read, or took any action adverse to Plaintiffs based on the contents of BankTrack Letter or the News Release. The Expert Report of Marc. J. Brown (“Brown Report”) does not identify ***any*** damages associated with the Construction Loan, and on the Bond Refinancing, the Brown Report specifically states that he offers no opinion “on issues involving liability and causation.” Ex. 15, Brown Rep. ¶ 6. The Leathers Supplemental Report and the Rebuttal Report of Vince Cabbage (“Cabbage Rebuttal Report”) likewise fail to identify any lender or financial institution that actually took any action adverse to Plaintiffs based on any allegedly defamatory statements, whether in the BankTrack Letter, the News Release, or elsewhere. See Ex. 10, Leathers Suppl. Rep. ¶¶ 43, 53; Ex. 16, Cabbage Rebuttal Rep. ¶ 26.

II. LEGAL STANDARD

[¶20] The Court must grant summary judgment if “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” N.D. R. Civ. P. 56(c)(3). Rule 56 “allows the defendant to put the plaintiff to its proof,” and requires judgment against the plaintiff unless the plaintiff presents “competent admissible evidence which raises an issue of material fact.” *Black v. Abex Corp.*, 1999 ND 236, ¶ 23, 603 N.W.2d 182, 188-89. When a defendant moves for summary judgment “with respect to an issue on which the nonmoving [plaintiff] bears the burden of proof,” the defendant meets its burden simply by “pointing out . . . an absence of evidence to support the nonmoving party’s case.” *Id.* at 188 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25 (1986)). “Summary judgment is proper against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case

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and on which that party will bear the burden of proof at trial.” *State v. \$3260.00 United States Currency*, 2018 ND 112, ¶ 5, 910 N.W.2d 839, 841 (quoting *Dahlberg v. Lutheran Soc. Servs.*, 2001 ND 73, ¶ 11, 625 N.W.2d 241).

III. ARGUMENT

[¶21] All of Plaintiffs’ claims against International, including Plaintiffs’ request for punitive or exemplary damages, must fail because Plaintiffs have provided no evidence regarding International that supports these claims.

[¶22] **First**, there is no evidence International engaged in any trespass to land or chattels, conversion, or nuisance, nor that it conspired or aided and abetted any others to engage in the alleged tortious actions in North Dakota. As a result, International is entitled to summary judgment on Counts I-VI and IX of the SAC.

[¶23] **Second**, as to International’s endorsement of three challenged statements, there is no evidence of any damages related to tortious interference (Count VIII) or defamation (Count VII) based on these statements, because there is no evidence that any of Plaintiffs’ lenders or potential investors ever (1) saw the BankTrack Letter or the News Release, (2) read the BankTrack Letter or the News Release, or (3) took any action based on the BankTrack Letter or the News Release—let alone any of the three challenged statements therein.

[¶24] **Finally**, there is no evidence that International acted with oppression, fraud, or actual malice warranting an award of exemplary or punitive damages. Plaintiffs’ request for such damages should be denied.

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A. Count I (Trespass to Land and Chattels) Fails for Lack of Evidence

1. Trespass to Land

[¶25] “For trespass, the plaintiff must establish the defendant intentionally entered the land of another, or caused a thing or third person to do so, without the consent of the landowner.” *Knutson v. City of Fargo*, 2006 ND 97, ¶ 16, 714 N.W.2d 44, 50. “The essence of a trespass to real property is interference with possession of land” *Sagebrush Res., LLC v. Peterson*, 2014 ND 3, ¶ 20, 841 N.W.2d 705, 713.

[¶26] Because no International employee went to Standing Rock, no International employee could have “intentionally entered” Plaintiffs’ property. *See Knutson*, 714 N.W.2d at 50. International is entitled to summary judgment on Plaintiffs’ claim for trespass to land.

2. Trespass to Chattels

[¶27] “[T]respass to chattels or personal property generally requires dispossession of the property, impairment of the condition, quality, or value of the property, loss of use of the property, or other harm.” *Sagebrush Res.*, 2014 N.D. 3, ¶ 19.

[¶28] Because no International employee went to Standing Rock, no International employee could have interfered with Plaintiffs’ property in any way, whether via dispossession or otherwise. International is entitled to summary judgment on Plaintiffs’ claim for trespass to chattels.

B. Count III (Conversion) Fails for Lack of Evidence

[¶29] Similar to trespass to chattels, a conversion claim “consists of a tortious detention or destruction of personal property, or a wrongful exercise of dominion or control over the property inconsistent with or in defiance of the rights of the owner.” *Ritter, Laber & Assocs. v. Koch Oil, Inc.*, 2004 ND 117, ¶ 11, 680 N.W.2d 634, 638.

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[¶30] Because no International employee went to Standing Rock, no International employee could have interfered with Plaintiffs’ property in any way, whether via detention, destruction, or otherwise. International is entitled to summary judgment on Plaintiffs’ conversion claim.

C. Count V (Nuisance) Fails for Lack of Evidence

[¶31] “A nuisance consists in unlawfully doing an act or omitting to perform a duty, which act or omission: 1. Annoys, injures, or endangers the comfort, repose, health, or safety of others; 2. Offends decency; 3. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake, navigable river, bay, stream, canal, basin, public park, square, street, or highway; or 4. In any way renders other persons insecure in life or in the use of property.” N.D.C.C. § 42-01-01. The North Dakota Supreme Court “has explained that ‘[t]he duty which gives rise to a nuisance claim is the absolute duty not to act in a way which unreasonably interferes with other persons’ use and enjoyment of their property.’” *G&D Enterprises v. Liebelt*, 2020 ND 213, ¶ 8, 949 N.W.2d 853, 856 (quoting *Rassier v. Houim*, 488 N.W.2d 635, 637 (N.D. 1992)).

[¶32] Because no International employee went to Standing Rock, no International employee could have interfered with Plaintiffs’ use and enjoyment of their property, whether “unreasonably” or not. *G&D Enterprises*, 949 N.W.2d at 856 (quoting *Rassier*, 488 N.W.2d at 637). International is entitled to summary judgment on Plaintiffs’ nuisance claim.

D. Counts II, IV, and VI (Aiding and Abetting) Fail for Lack of Evidence

[¶33] North Dakota courts have not expressly recognized aiding and abetting as an independent tort claim, and for that reason alone summary judgment should be granted on these Counts. The closest authority supporting such a claim is dicta in which the North Dakota Supreme Court, referencing the Restatement (Second) of Torts, indicated that it *could be possible* for a defendant

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to be liable “for harm resulting to a third person from the tortious conduct of another if he knows that the other’s conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself.” *Hurt v. Freeland*, 1999 ND 12, ¶ 26, 589 N.W.2d 551, 558 (quoting Restatement (Second) of Torts § 876 (1979)).

[¶34] Here, even if aiding and abetting could be an affirmative claim, Plaintiffs’ evidence falls short. There is no evidence International engaged in any actions in North Dakota or coordinated any actions in North Dakota, nor did it provide financial support or supplies for Standing Rock protestors. Plaintiffs’ only basis to hold International liable for aiding and abetting trespass, conversion, and nuisance is its endorsement of the statements in the BankTrack Letter and the News Release, which are utterly inadequate to serve as the basis for aiding and abetting liability.

[¶35] **First**, neither the BankTrack Letter nor the News Release could have caused anyone to commit any of the torts alleged in Counts I, III, or V because they were published well after the events in question—in the case of the News Release, almost two years later. The last alleged incident of property interference occurred on November 20, 2016, *see* SAC ¶ 77, while the BankTrack letter was sent on November 30, 2016 and the News Release was posted in June 2018. Moreover, Plaintiffs cannot identify a single person who engaged in any of the torts alleged in Counts I, III, or V who either saw, read, or engaged in the alleged wrongful conduct based on the contents of the BankTrack Letter or the News Release.

[¶36] **Second**, no statements in either the BankTrack Letter nor the News Release directed or solicited anyone to commit any of the torts alleged in Counts I, III, or V—they did not assist or encourage anyone to trespass on Plaintiffs’ land or interfere with their personal property. *See Hinton v. Bryant*, 236 Ark. 577, 581, 367 S.W.2d 442, 444 (1963) (defendant liable “where a

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trespass is committed **by defendant's advice or direction**" (emphasis in original)).

[¶37] **Third**, it is plainly legally insufficient for one website post or a mere signature on an open letter that 500 other organizations also signed to constitute the "substantial assistance" necessary under *Hurt*. For example, in *Hurt*, the North Dakota Supreme Court acknowledged that a passenger could be held liable for injuries caused in a car accident by actively furnishing alcohol to the driver (though ultimately finding there was no evidence that the passenger gave the driver alcohol or encouraged him to drink). 589 N.W.2d at 558. The BankTrack Letter and the News Release lack a sufficient connection to any of the alleged torts.

[¶38] Accordingly, Plaintiffs have not provided competent evidence supporting their aiding and abetting claims against International, and International is entitled to summary judgment on Counts II, IV, and VI.

E. Count IX (Conspiracy) Fails for Lack of Evidence

[¶39] "Civil conspiracy is: a combination of two or more persons acting in concert to commit an unlawful act or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties to inflict a wrong against or injury upon another and an overt act that results in damages." *Burris Carpet Plus, Inc. v. Burris*, 2010 ND 118, ¶ 42, 785 N.W.2d 164, 179 (quoting *Peterson v. North Dakota Univ. Sys.*, 2004 ND 82, ¶ 27, 678 N.W.2d 163). Civil conspiracy differs from aiding and abetting in that it "allows an agreement between the parties to serve as a substitute for the substantial assistance required to support a claim of aiding and abetting." Restatement (Third) of Torts: Liab. For Econ. Harm § 27 cmt. A (2020). In other words, proof of agreement is required to prevail on a civil conspiracy claim. *See Peterson v. North Dakota Univ. Sys.*, 2004 ND 82, ¶ 27, 678 N.W.2d 163, 174 (affirming summary judgment on civil

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conspiracy claim where faculty member failed to show any agreement by university officials to act unlawfully).

[¶40] Here, Plaintiffs must prove there was an “agreement” among the defendants to “inflict a wrong against” Plaintiffs in the form of trespass, conversion, nuisance, or providing substantial assistance for any of those torts. *See Burris*, 785 N.W.2d at 179. The BankTrack Letter and the News Release—the only relevant evidence of International’s involvement in activities opposing DAPL—do not constitute such an agreement, as they only express opinions on the events at Standing Rock without evincing any agreement to participate in or contribute to those events. Ex. 5. And Plaintiffs have provided no other evidence establishing that International entered into such an agreement. Because Plaintiffs cannot prove this essential element of their civil conspiracy claim, International is entitled to summary judgment on Count IX.

F. Count VIII (Tortious Interference) and Count VII (Defamation) Fail for Lack of Evidence

1. Tortious Interference (Count VIII)

[¶41] In Count VIII of the SAC, Plaintiffs allege that International “intentionally interfered” with both “existing and prospective business relationships.” SAC ¶ 131. Specifically, Plaintiffs claim that International (1) interfered with existing business relationships by causing lenders to divest from the Construction Loan, and (2) interfered with prospective business relationships concerning the Bond Refinancing. However, after years of discovery, Plaintiffs have no evidence that any contract was breached, nor that a single Construction Loan lender or potential Bond Refinancing investor saw, read, or took any adverse action against Plaintiffs based upon any statement by International, including the BankTrack Letter or the News Release. Absent such evidence,

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Plaintiffs cannot prove that International “instigated” any breach of an existing contract. *Hilton v. North Dakota Educ. Ass’n*, 2002 ND 2099, ¶ 24, 655 N.W.2d 60, 68. Nor can Plaintiffs show that “but for” these statements, a single additional creditor would have underwritten Plaintiffs’ bond issuance in 2017 or 2018, or a single additional investor would have purchased those bonds. *Smith Enterprises, Inc. v. In-Touch Phone Cards, Inc.*, 2004 ND 169, ¶ 20, 685 N.W.2d 741, 747. Under either theory, Plaintiffs’ claim therefore fails.

a. Plaintiffs Cannot Establish Tortious Interference with the Construction Loan

[¶42] To establish a prima facie case of intentional interference with a contract, in this instance the alleged Construction Loan, Plaintiffs must prove:

- (1) a contract existed,
- (2) the contract was breached,
- (3) the defendant instigated the breach, and
- (4) the defendant instigated the breach without justification.

Hilton, 655 N.W.2d at 68. “Generally, an interference with contract claim contemplates a tortfeasor who either prevented a third party from entering into a contract or induced the third party to breach the contract with the plaintiff.” *Thimjon Farms P’ship v. First Int’l Bank & Tr.*, 2013 ND 160, ¶ 12, 837 N.W.2d 327, 333–34. “[T]he person whose wrongful conduct is responsible for these results [will be] liable in damages to the party injured.” *Van Sickle v. Hallmark & Assocs., Inc.*, 2008 ND 12, ¶ 24, 744 N.W.2d 532, 540 (quoting *Trade ‘N Post, L.L.C. v. World Duty Free Americas, Inc.*, 2001 ND 116, ¶ 33, 628 N.W.2d 707, 716). Here, Plaintiffs can present no evidence that any one of the Construction Loan lenders breached any contract they had with Plaintiffs, let

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alone because of any statement contained within the BankTrack Letter or the News Release.

[¶43] **First**, under the “Credit and Guaranty Agreement” between Plaintiffs and lenders for the Construction Loan, lenders were permitted to assign their interests in DAPL to third parties with Plaintiffs’ consent, unless the assignee was another lender. Ex. 11 (ISB_0000203) at ISB_0000306, § 12.15(b) (“Any Lender may assign to one or more Persons . . . all or a portion of its rights and obligations under this Agreement”). Here, while there were assignments by certain lenders, Plaintiffs **consented** to every one of these assignments, or were not required to because the assignment was to another lender. *See, e.g.*, Ex. 17 (ET-01072306); Ex. 18 (ET-01057795); Ex. 19 (ET-01061744); Ex. 20 (ET-01202319). In other words, Plaintiffs cannot show that any of the lenders breached the Agreement.

[¶44] In *Berger v. Sellers*, the North Dakota Supreme Court affirmed the dismissal of two intentional interference claims regarding a construction contract and a construction loan agreement because “no evidence was presented showing either of these contracts was breached.” 2023 ND 171, ¶ 48, 996 N.W.2d 329, 349. The Court should find the same here: there is no evidence that any of Plaintiffs’ contracts with lenders were breached. International is entitled to summary judgment on this basis alone.

[¶45] **Second**, Plaintiffs can present no evidence that any of these alleged Construction Loan lenders ever saw, read, or took any action based on the contents of the BankTrack Letter or the News Release, let alone International’s endorsement of these writings. *See* Ex. 12, Hayse Dep. 113:5-7, 114:6, 167:10-11, 169:2-7; Ex. 14, Feb. 15 Futch Dep. (Feb. 15, 2024) 103:1-15. For that reason, Plaintiffs lack any evidence that International “instigated” any claimed breach or did so “without justification.” *Hilton*, 655 N.W.2d at 68. In short, Plaintiffs lack evidence of causation,

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which is fatal to their claim. See *Mr. G's Turtle Mountain Lodge, Inc. v. Roland Twp.*, 2002 ND 140, ¶ 26, 651 N.W.2d 625, 633 (affirming summary judgment on tortious interference claim due to lack of evidence that defendant's letters caused the interference alleged).

[¶46] Because Plaintiffs cannot prove essential elements of their claim for intentional interference with contract, the Court should grant summary judgment for International on Count VIII.

b. Plaintiffs Cannot Establish Tortious Interference with the Bond Refinancing

[¶47] To prevail on a claim for unlawful interference with prospective business, in this instance the subsequent Bond Refinancing damage claim, Plaintiffs must prove five essential elements:

- (1) the existence of a valid business relationship or expectancy;
- (2) knowledge by the interferer of the relationship or expectancy;
- (3) an independently tortious or otherwise unlawful act of interference by the interferer;
- (4) proof that the interference caused the harm sustained; and
- (5) actual damages to the party whose relationship or expectancy was disrupted.

Trade 'N Post, L.L.C., 2001 ND 116, ¶ 36, 628 N.W.2d at 717. Plaintiffs asserting a claim for tortious interference with a prospective business relationship “are held to a stringent standard, and they must show they would have obtained the economic benefit in the absence of the interference.” *Bertsch v. Duemeland*, 2002 ND 32, ¶ 24, 639 N.W.2d 455, 462; accord *Smith Enterprises, Inc. v. In-Touch Phone Cards, Inc.*, 2004 ND 169, ¶ 20, 685 N.W.2d 741, 747 (plaintiff must prove that “**but for** the actions of [the defendant], [the plaintiff] **would have** obtained the actual economic

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benefit”).

[¶48] Plaintiffs claim that the allegedly defamatory statements in the BankTrack Letter and the News Release interfered with their prospective business opportunity with lenders and financial institutions, causing a delay in the Bond Refinancing. *See* Ex. 10, Leathers Suppl. Rep. ¶¶ 54-55. But Plaintiffs fail to present evidence necessary for the claim to survive.

[¶49] **First**, there is no evidence that “the [alleged] interference caused the harm sustained.” *Trade ‘N Post, L.L.C.*, 2001 ND 116, ¶ 36, 628 N.W.2d 707, 717. There is no evidence that any lender or potential investor saw, read, or took any action in connection with the Bond Refinancing as a result of the BankTrack Letter or the News Release. Indeed, the News Release was published in June 2018—several months to a year after Plaintiffs apparently intended to refinance the Construction Loan, in August 2017 or February 2018—so the News Release could not have been the basis of any decision by any potential investor. And although expert Leathers states that Plaintiffs expected the Construction Loan lenders to participate in the Bond Refinancing, Ex. 10, Leathers Suppl. Rep. ¶ 77, there is no actual evidence from a single one of the lenders to that effect. Plaintiffs therefore cannot satisfy the “stringent standard” to “show they would have obtained the economic benefit in the absence of the interference.” *Bertsch*, 639 N.W.2d at 462.

[¶50] *Mr. G’s Turtle Mountain Lodge, Inc. v. Roland Twp.* controls this case. In *Mr. G’s*, the court affirmed summary judgment for the defendant because the plaintiff “failed to present any evidence that [the defendant’s] letters caused prospective bidders to refrain from bidding” at the plaintiff’s public auction, and “could not identify anyone whose decision whether to bid or attend the auction was influenced by the letters.” 2002 ND 140, ¶¶ 26-27, 651 N.W.2d 625, 633. The court found that the plaintiff’s argument was “mere conjecture that a causal connection existed

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between the publication of the letters and the decision of individual purchasers to bid on the lots,” and that “[t]here may have been numerous other factors which caused the failure of the sale.” *Id.*

¶ 28. In short, the plaintiff could not defeat a summary judgment motion because there was no evidence of causation. The same result should follow here; Plaintiffs have provided nothing more than speculation that the BankTrack Letter caused their Bond Refinancing damages.

[¶51] In fact, the undisputed evidence is that Plaintiffs decided to delay the Bond Refinancing for reasons entirely unrelated to any Greenpeace entity, or even the Standing Rock protests at all. Plaintiffs’ corporate representative and treasurer Ashton Hayse advised at two separate board meetings that management decided to “delay the refinancing effort until there was more certainty regarding the lawsuit with the Native American Tribes.” Ex. 21, ET-01603527 – ET-01603556, at ET-01603532 (Sept. 26, 2018 Bakken Pipeline Investments LLC Board Meeting Minutes); *accord* Ex. 22, ET-01655731 – ET-01655760, at ET-01655736 (June 27, 2018 Bakken Pipeline Investments LLC Board Meeting Minutes). Other banks that divested from Energy Transfer expressly stated that they “did not divest . . . as the result of pressure from Greenpeace,” and “[t]here is no way that any NGO in the world could make us to ‘cave in’ as alleged by the plaintiff.” Ex. 23, Deposition of Lisa Coleman Ex. 193.

[¶52] **Second**, Plaintiffs have presented no evidence that “a valid business relationship or expectancy” with any particular potential creditor or investor existed. *Trade ‘N Post, L.L.C.*, 2001 ND 116, ¶ 36, 628 N.W.2d at 717. Plaintiffs list several institutions that declined to participate in the Bond Refinancing, but Plaintiffs have presented no evidence that those institutions had previously committed to participating in these specific financings, and Plaintiffs admit that the institutions had no obligation to do so. *See* Ex. 12, Hayse Dep. 49:19-50:4, 245:4-9.

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[¶53] **Third**, Plaintiffs have presented no evidence that International had “knowledge by the interferer of the relationship or expectancy.” *Trade ‘N Post, L.L.C.*, 2001 ND 116, ¶ 36, 628 N.W.2d 707, 717. There is no evidence that International (1) knew that Plaintiffs tentatively planned the Bond Refinancing in 2017 or 2018, (2) knew the identity of any one of the potential investors in the Bond Refinancing, or (3) directed the BankTrack Letter to those institutions.

[¶54] Because Plaintiffs cannot prove essential elements of their claim for unlawful interference with prospective business, the Court should grant summary judgment for International on Count VIII.⁴

2. Defamation (Count VII)

[¶55] Plaintiffs also seek damages against International for the alleged defamatory statements in the BankTrack Letter and the News Release. But again, Plaintiffs have presented no evidence that any of their lenders or potential investors ever (1) saw the BankTrack Letter or News Release, (2) read the BankTrack Letter or News Release, or (3) made any decision or took any action that caused damage to Plaintiffs based on the BankTrack Letter or News Release.⁵

G. Plaintiffs’ Claim for Exemplary or Punitive Damages Against International Fails for Lack of Evidence

⁴ Additionally, the “independently tortious . . . act of interference” that Plaintiffs allege is defamation based on the statements in the BankTrack Letter and the News Release. *Trade ‘N Post, L.L.C.*, 2001 ND 116, ¶ 36, 628 N.W.2d at 717. If the Court finds that Plaintiffs cannot prove their defamation claim (Count VII), it must necessarily grant summary judgment on Plaintiffs’ tortious interference claim (Count VIII).

⁵ As Defendants explain in a separate motion, Plaintiffs are precluded from any recovery for defamation **other than** provable economic loss, because they failed to serve a timely demand for the correction or retraction of any allegedly defamatory statement as required by North Dakota law. N.D.C.C. § 32-43-03. Accordingly, because Plaintiffs cannot show International caused Plaintiffs any economic loss, the Court should hold that Plaintiffs are not entitled to **any** recovery from International on the defamation claim. Separately, Defendants intend to move for summary judgement on the defamation claim because Plaintiffs cannot meet their burden of establishing the elements of that claim as to any of the allegedly defamatory statements, including falsity of the statements and actual malice.

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[¶56] North Dakota law allows for recovery of exemplary damages only where there is “clear and convincing evidence of oppression, fraud, or actual malice.” N.D.C.C. § 32-03.2-11. “‘Oppression,’ as used in the statute, means ‘subjecting a person to cruel and unjust hardship in conscious disregard of his rights.’” *Harwood State Bank v. Charon*, 466 N.W.2d 601, 604 (N.D. 1991) (quoting *Napoleon Livestock Auction, Inc. v. Rohrich*, 406 N.W.2d 346 (N.D. 1987)). “‘[F]raud’ is (1) the suggestion as fact of that which is not true by one who does not believe it to be true; (2) the assertion as a fact of that which is not true by one who has no reasonable ground for believing it to be true; (3) the suppression of a fact by one who is bound to disclose it, or who gives information that is likely to mislead because that fact was not communicated; or (4) a promise made without any intention of performing.” *McHugh v. Jacobs*, 450 F. Supp. 2d 1019, 1022–23 (D.N.D. 2006) (citing North Dakota pattern jury instructions and North Dakota case law). And actual malice, for purposes of the exemplary damages statute, “is defined as ‘an intent with ill will or wrongful motive to harass, annoy, or injure another person.’” *Zander v. Morsette*, 2021 ND 84, ¶ 31, 959 N.W.2d 838, 846 (quoting *McHugh v. Jacobs*, 450 F. Supp. 2d 1019, 1022 (D.N.D. 2006)).

[¶57] Because Plaintiffs’ substantive claims fail, as described above, Plaintiffs’ request for exemplary damages must also be denied. See *Rodenburg Law Firm v. Sira*, 2019 ND 205, ¶ 18, 931 N.W.2d 687, 691 (“A claim for exemplary damages is derivative of another cause of action, is not an independent claim, and ‘no award of exemplary damages may be made if the claimant is not entitled to compensatory damages.’” (quoting N.D.C.C. § 32-03.2-11(4))).

[¶58] In any event, there is no evidence that International acted with oppression, fraud, or actual malice warranting exemplary damages. Although the Court found Plaintiffs had made a sufficient

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Greenpeace International’s Brief in Support of Motion for Summary Judgment on All Counts

showing to ***plead*** exemplary damages as to the Defendants generally, there was no evidence presented as to International that could support an award of exemplary damages. Accordingly, the Court should bar Plaintiffs from recovering exemplary damages against International.

IV. CONCLUSION

[¶59] International has “point[ed] out . . . an absence of evidence to support the nonmoving party’s case,” and is therefore entitled to summary judgment. *Black*, 603 N.W.2d at 188 (quoting *Celotex Corp*, 477 U.S. at 325). For all the above reasons, International respectfully requests that this Court grant summary judgment in its favor on all claims (Counts I, II, III, IV, V, VI, VII, VII, VIII, and IX), and on Plaintiffs’ request for exemplary or punitive damages.

Dated April 8, 2024.

Respectfully submitted,

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HIGHLY CONFIDENTIAL

Energy Transfer, LP, et al. v. Greenpeace International, et al.
Greenpeace International’s Brief in Support of Motion for Summary Judgment on All Counts

EXHIBIT 8

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

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,)

Plaintiffs,)

v.)

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

Defendants.)

Case No. 30-2019-CV-00180

**CERTIFICATE OF
ELECTRONIC SERVICE**

[¶ 1] I hereby certify that on July 22, 2025, true and correct copies of the following documents:

1. Notice of Plaintiffs’ Emergency Motion for Anti-Suit Injunction;
2. Plaintiffs’ Emergency Motion for Anti-Suit Injunction;
3. Plaintiffs’ Memorandum of Law in Support of Their Emergency Motion for Anti-Suit Injunction;
4. Declaration of John T. Cox III in Support of Plaintiffs’ Emergency Motion for Anti-Suit Injunction;
5. Exhibits A – F to the Declaration of John T. Cox in Support of Plaintiffs’ Emergency Motion for Anti-Suit Injunction;
6. *[Proposed]* Order Granting Plaintiffs’ Emergency Motion for Anti-Suit Injunction.

were electronically filed and served through the Odyssey® system upon the contacts listed below unless otherwise noted:

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[¶2] I further certify that the foregoing documents were NOT served on the following because their addresses are unknown:

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Red Warrior Society (a/k/a "Red Warrior Camp")
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Dated this 22nd day of July 2025.

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)
Energy Transfer Equity, L.P.); Energy)
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Greenpeace International (also known as)
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Red Warrior Society (also known as “Red)
Warrior Camp”); Cody Hall; Krystal Two)
Bulls,)

Defendants.)

Case No. 30-2019-CV-00180

**NOTICE OF PLAINTIFFS’
EMERGENCY MOTION FOR
ANTI-SUIT INJUNCTION**

TO: THE ABOVE-NAMED DEFENDANTS AND THEIR COUNSEL OF RECORD.

[¶1] PLEASE TAKE NOTICE that Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access, LLC (together, “Plaintiffs”), by and through their counsel of record, have filed an Emergency Motion for Anti-Suit Injunction, along with a Memorandum of Law in Support, Declaration, and Exhibits in support thereof, in the above-captioned matter. This Motion is submitted pursuant to Rule 3.2 of the North Dakota Rules of Court and oral argument is requested.

Dated this 22nd day of July, 2025.

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

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Energy Transfer LP (formerly known as)
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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.)

Case No. 30-2019-CV-00180

**PLAINTIFFS’ EMERGENCY
MOTION FOR
ANTI-SUIT INJUNCTION**

¶1 Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access, LLC (together, “Plaintiffs”), respectfully request, pursuant to Rule 3.2 of the North Dakota Rules of Court, that the Court enjoin Defendant Greenpeace International from proceeding with its duplicative and vexatious Dutch Action, which threatens the legitimacy of the North Dakota judiciary, during the pendency of this case and any future appeals.

¶2 This motion is supported by Plaintiffs’ Memorandum in Support of Their Emergency Motion for Anti-Suit Injunction, the Declaration of John T. Cox III, and exhibits attached thereto.

Dated this 22nd day of July, 2025.

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STATE OF NORTH DAKOTA

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Two Bulls,)

Defendants.)

Case No. 30-2019-CV-00180

PLAINTIFFS’ MEMORANDUM OF LAW IN SUPPORT OF THEIR EMERGENCY
MOTION FOR ANTI-SUIT INJUNCTION

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[¶1] Plaintiffs¹ move for an emergency anti-suit injunction to enjoin Defendant Greenpeace International (“GPI”) from proceeding with a duplicative action against Plaintiffs in the Netherlands that constitutes a direct assault on this Court’s authority.

INTRODUCTION

[¶2] After years of litigation and a full and fair trial, a North Dakota jury rendered a sweeping verdict in favor of Energy Transfer. In reaching its verdict, the jury considered and rejected the same arguments that GPI has unsuccessfully raised before the Court at every turn: that Energy Transfer’s case against GPI is a “meritless” SLAPP suit, that GPI played a minimal role in the illegal campaign to stop DAPL, and that it caused no harm to Energy Transfer. Undeterred by the jury’s verdict, GPI now seeks a second bite at the apple. Instead of respecting the judicial process and pursuing an appeal at the appropriate time, GPI has turned to a foreign court to relitigate issues already decided here, raising the same arguments that it has unsuccessfully asserted in this case. This is not a good-faith effort to vindicate new rights; it is a blatant, calculated end-run around the lawful outcome of this case and an affront to the integrity of this Court and the North Dakota judiciary. In short, GPI’s Dutch lawsuit against Energy Transfer (the “Dutch Action”) is duplicative, harassing, and transparently designed to undermine the reasoned decisions of the Court and the jury.²

[¶3] This Court has both the power and the duty to protect the integrity of these proceedings, prevent vexatious litigation and forum shopping, and put an end to GPI’s campaign of legal evasion. Plaintiffs respectfully request that the Court exercise that power here and issue

¹ Plaintiffs are Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access, LLC (collectively, “Energy Transfer”).

² Exhibit A is an English translation of GPI’s summons and complaint in the Dutch Action. Exhibit B is the Dutch version of the same.

an anti-suit injunction without delay.

BACKGROUND

[¶4] Energy Transfer filed this suit on February 21, 2019, ultimately asserting claims for trespass to land, trespass to chattel, conversion, nuisance, aiding and abetting, conspiracy, defamation (including defamation *per se*), and tortious interference. Dkts. 2, 2836. Over six years of litigation, GPI sought to dismiss the claims against it at every turn, arguing that Energy Transfer’s claims were without merit. *See generally* Dkts. 47 (GPI’s Motion to Dismiss), 2850 (GPI’s Motion for Summary Judgment on All Counts). Time and time again, the Court has rejected these arguments. Dkts. 242 (denying motions to dismiss), 4795 (denying motions for summary judgment).

[¶5] The case proceeded to trial on February 24, 2025. All three Greenpeace entities, including GPI, coordinated their defense. Indeed, Greenpeace Inc. and GPI were represented by the same counsel. At trial, GPI again argued that the claims against it were meritless, dismissing Energy Transfer’s claims as nothing more than “mud” slinging. Ex. F, Mar. 17, 2025 Tr. 118:11–14.

[¶6] The jury rejected these arguments in resounding fashion. After three weeks of trial, the jury found GPI liable for conspiracy, tortious interference, defamation, and defamation *per se* and ordered it to pay Energy Transfer \$131,889,740 in damages. Dkt. 5035. The Court has not yet entered final judgment. But post-trial briefing is complete, and judgment is imminent.

[¶7] On February 11, 2025—two weeks before the start of trial in this case—GPI opted to hedge its bets by initiating the Dutch Action, seeking an order declaring this case meritless and ordering Energy Transfer to pay GPI the “damages” associated with this case, including its attorneys’ fees and costs. Ex. A ¶¶ 159–67. Specifically, GPI asserts claims under a recently published European Union anti-SLAPP directive (which has not yet been enacted into Dutch Law),

raising arguments regarding the merits of this case that are functionally identical to those that GPI has repeatedly (and unsuccessfully) made throughout this case. *Compare* Dkt. 2851 (Brief in support of GPI’s Motion for Summary Judgment on All Counts), *with* Ex. A ¶¶ 51–57.³

¶8 GPI is desperately pressing ahead with the Dutch Action, even after the jury vindicated Energy Transfer’s claims against GPI (and the other Greenpeace Defendants). Seemingly undeterred, GPI has issued multiple post-verdict press releases and website posts, touting the Dutch Action as a means to label this case “meritless,” avoid the jury’s verdict, and compel Energy Transfer to compensate GPI for this litigation. Exs. D–E.

ARGUMENT

¶9 Energy Transfer is entitled to an anti-suit injunction. It is “well settled” that American courts, both state and federal, have the “power to control the conduct of persons subject to their jurisdiction to the extent of forbidding them from suing in foreign jurisdictions.” *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 926 (D.C. Cir. 1984); *accord GigSmart, Inc. v. AxleHire, Inc.*, 2023-Ohio-3807, 226 N.E.3d 1073, ¶ 70 (1st Dist.) (affirming state court order granting anti-suit injunction to prohibit party from proceeding with foreign litigation); *London Mkt. Insurers v. Am. Home Assur. Co.*, 95 S.W.3d 702, 710 (Tex. App.—Corpus Christi–Edinburg 2003, no pet.) (same).⁴ That a later-filed proceeding is pending in a foreign court does not diminish the Court’s power, as the injunction acts on the party before the Court and not on the foreign court. *See, e.g., Nat’l Indus. Grp. (Holding) v. Carlyle Inv. Mgmt.*

³ GPI first sent Energy Transfer a “notice of liability” in July 2024, on the eve of the previous trial date in this case, but waited until February 2025 to file the Dutch Action. Ex. C.

⁴ To date, there are no reported decisions of a North Dakota court issuing an anti-suit injunction. That said, there is no reason to doubt that the Court has this power, as “[d]istrict courts have broad authority when fashioning an equitable remedy.” *Schroeder v. Buchholz*, 2001 ND 36, ¶ 29, 622 N.W.2d 202 (citing *Baker v. Minot Public School Dist. No. 1*, 253 N.W.2d 444, 451 (N.D. 1977)). Indeed, “[a] lack of precedent is no obstacle to equitable relief which may be appropriate in a particular factual setting.” *Id.*

L.L.C., 67 A.3d 373, 384 (Del. 2013) (upholding decision to enjoin a proceeding in Kuwait, stating that “injunctive power allows the Court of Chancery to restrain a party that is subject to its jurisdiction from proceeding in a foreign court”). After all, the Court derives this ability from its equitable powers, which ultimately allow it to “restrain a party subject to its jurisdiction from proceeding in a foreign court under circumstances that are unjust.” *E. & J. Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 989 (9th Cir. 2006) (reversing order denying motion for anti-suit injunction).

[¶10] Although the Court’s power to issue an anti-suit injunction is not to be wielded lightly, such an injunction is appropriate under circumstances like those present here, when, without an anti-suit injunction, “the integrity of the action before this court will be lessened.” *Microsoft Corp. v. Motorola, Inc.*, 871 F. Supp. 2d 1089, 1100 (W.D. Wash 2012), *aff’d*, 696 F.3d 872 (9th Cir. 2012). In fact, the need for an antisuit injunction “crests,” when, as here, “a party institutes a foreign action in a blatant attempt to avoid the rightful authority of the forum court.” *Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren*, 361 F.3d 11, 20 (1st Cir. 2004). Moreover, once the Court has reached the merits of a matter, it must “freely protect the integrity of its judgments by preventing their evasion through vexatious or oppressive relitigation.” *Laker Airways*, 731 F.2d at 928.

[¶11] Courts use a three-step analysis to determine whether an anti-suit injunction is appropriate.⁵ As a threshold matter, the Court must assess whether the parties and issues are functionally the same across the parallel cases. *See, e.g., Quaak*, 361 F.3d at 18. Once those prerequisites are satisfied, the Court must examine the following five equitable factors: whether

⁵ The traditional four-factor test for a preliminary injunction does not apply in the context of an anti-suit injunction. *See, e.g., Beber v. NavSav Holdings, LLC*, 140 F.4th 453, 459 (8th Cir. 2025); *Quaak*, 361 F.3d at 19 (“Because this generic algorithm provides an awkward fit in cases involving international antisuit injunctions, district courts have no obligation to employ it in that context.”).

the parallel litigation would (1) frustrate a policy of the enjoining forum; (2) be vexatious or oppressive; (3) threaten the issuing court's *in rem* or *quasi in rem* jurisdiction; (4) prejudice other equitable factors; or (5) result in delay, inconvenience, expense, inconsistency, or a race to judgment. See, e.g., *Gallo*, 446 F.3d at 989–90 (factors 1–4); *Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 500 F.3d 111, 119 (2d Cir. 2007) (factors 1–5). If any of these factors is satisfied, an anti-suit injunction may be proper. *Gallo*, 446 F.3d at 990.

[¶12] The final step of the analysis requires the court to consider principles of comity in evaluating the propriety of an anti-suit injunction. See, e.g., *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 626–27 (5th Cir. 1996). In considering the impact of international comity, some courts take a more restrictive approach to anti-suit injunctions, while others are more permissive, with the key difference being that the former gives greater weight to concerns of comity. *Goss Int'l Corp. v. Man Roland Druckmaschinen Aktiengesellschaft*, 491 F.3d 355, 360–61 (8th Cir. 2007) (collecting cases and adopting the restrictive approach). As explained below, an anti-suit injunction is appropriate in this case irrespective of the approach to comity that the Court chooses to employ.

[¶13] Applying these factors here, the Court should enjoin GPI from proceeding in the Dutch Action. Not only does the Dutch Action involve identical parties to those before the Court, but it *explicitly* asks the Dutch court to resolve issues that the Court and the jury have already resolved. At its core, GPI's Dutch Action is a transparent attack on the integrity and finality of these proceedings, and a clear attempt to harass Energy Transfer with duplicative, “do-over” litigation, waste time and resources, and create the risk of inconsistent judgments. The Court thus has a duty to protect the integrity of the proceedings before it by issuing an anti-suit injunction. See, e.g., *Laker Airways*, 731 F.2d at 928; *Microsoft*, 871 F. Supp. 2d at 1100.

I. The Parties and Issues are Functionally Identical in Both the North Dakota Action and the Dutch Action.

[¶14] Both of the threshold requirements for an anti-suit injunction—the identity of the parties and the overlap in the claims—are clearly satisfied here.

[¶15] *First*, it is beyond dispute that all parties to the Dutch Action are also parties to this case. Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access, LLC are Plaintiffs here and defendants in the Dutch Action, and GPI is a Defendant here and the plaintiff in the Dutch Action. Dkts. 2, 2836; Ex. A. This overlap more than satisfies the substantial identity required to satisfy this prong. *Quaak*, 361 F.3d at 18; *see also Eastman Kodak Co. v. Asia Optical Co.*, 118 F. Supp. 3d 581, 587 (S.D.N.Y. 2015) (“This requirement is met if the parties are ‘sufficiently similar.’”).

[¶16] *Second*, the Dutch Action is a transparent attempt by GPI to relitigate the exact issues that this Court and the jury have already considered. In GPI’s own words, the Dutch Action is an attempt to brand this litigation, which has resulted in a \$131,889,740 verdict against GPI, as “meritless.” Exs. D–E. In its effort to undermine the integrity of this proceeding, GPI raises many of the same arguments rejected by the Court when it denied Greenpeace’s motions for summary judgment and by the jury when it handed down its verdict:

Dutch Action Summons (Ex. A)	Mem. of Law in Support of GPI’s Motion for Summary Judgment (Dkt. 2851)	GPI Closing Argument (Ex. F)
“Signing BankTrack’s open letter was the entirety of GPI’s involvement with the opposition to DAPL.” ¶ 38.	“[T]he sum total of evidence with regard to International is that it joined . . . in signing <i>one letter</i> sent by a third party to a number of financial institutions” ¶ 2.	“[A]ll that [Plaintiffs] have been able to prove about Greenpeace International [is that] . . . they signed their name to one letter” 118:18–22.
“Energy Transfer, despite the years-long discovery process, has been unable to produce any evidence of a causal link	“In short, Plaintiffs lack evidence of causation, which is fatal to their claim.” ¶ 45.	“So here plaintiffs have slung a lot of mud at Greenpeace International but never once shown how

between the (alleged) damages it suffered and any actions of GPI.” ¶ 65(d).		the one act of signing a letter . . . caused them any damage” 135:21–25
“GPI also shows that the high threshold applicable to the award of ‘exemplary damages’ claimed by Energy Transfer has not been met, which requires ‘clear and convincing evidence of oppression, fraud or actual malice’ – however, there is no scintilla of evidence of such acts by GPI.” ¶ 66.	“In any event, there is no evidence that International acted with oppression, fraud, or actual malice warranting exemplary damages.” ¶ 58.	“[P]laintiffs also want punitive damages. Punitive means they want to punish them, set an example. But they can only get punitive damages if the compensatory damages they want, that 300 million, is as I said entirely speculative, so you cannot have it that way.” 137:1–6.

Simply put, considering the substantial overlap in issues and arguments between this case and the Dutch Action, the second “gatekeeping” inquiry is satisfied here. *Quaak*, 361 F.3d at 18.

II. The Discretionary Factors Governing Foreign Anti-Suit Injunctions Also Weigh in Favor of Enjoining GPI From Proceeding with the Dutch Action.

A. The Dutch Action Frustrates the Policy Interests of the State of North Dakota.

[¶17] GPI’s attempt to evade the jury’s verdict and collaterally attack the decisions of this Court undermines a key policy interest of the State of North Dakota. Protecting the integrity of a judicial proceeding is a “state interest of the highest order.” *Cf. Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 446 (2015). Likewise, the North Dakota Constitution recognizes the “inviolable” right to trial by jury and reflects a key public policy interest in protecting the integrity of jury verdicts. *See* N.D. Const. art. I, § 13. And it is well-established that states have a strong public policy interest in protecting the finality of jury verdicts from collateral attack “because [finality] is essential to the viability of the jury as an institution integral to our judicial system.” *E.g., Anderson v. Burnett Cnty.*, 558 N.W.2d 636, 640 (Wis. Ct. App. 1996).

[¶18] And yet, in an affront to these critical policy interests, GPI filed the Dutch Action asking a foreign court to substitute its own decisions for those of this Court, and to declare this

case “meritless” despite the jury’s carefully reasoned decision to hold GPI liable for defamation, tortious interference, and conspiracy, and to award Energy Transfer \$131 million in damages. Exs. D–E. Make no mistake: this is a frontal assault on the integrity of this case, the Court, and the jury. After all, GPI is asking a Dutch court to make a collateral determination that this Court wrongfully denied GPI’s motions to dismiss and motions for summary judgment, and that the jury’s verdict is without merit. This is precisely the type of “evasion” that an anti-suit injunction is intended to prevent, and the Court must enjoin GPI to protect the integrity of these proceedings and the decisions already reached by the Court and the jury. *Laker Airways*, 731 F.2d at 928. In fact, it is difficult to imagine a case where an anti-suit injunction is more warranted—when a party like GPI “institutes a foreign action in a blatant attempt to evade the rightful authority of the forum court, the need for an antisuit injunction crests.” *Quaak*, 361 F.3d at 20 (citing *Laker Airways*, 731 F.2d at 929–30).

[¶19] Ultimately, if GPI wants to challenge this Court’s rulings and overturn the jury’s verdict, it must do so through the ordinary judicial process and appellate review. It cannot be allowed to undermine the Court’s integrity and authority by seeking a do-over in a foreign court. *See Laker Airways*, 731 F.2d at 928. To hold otherwise would make a mockery of this Court’s rightful authority and severely undermine North Dakota’s policy interest in the integrity and orderly process of judicial proceedings. *Id.*

B. The Dutch Action is Vexatious and Oppressive.

[¶20] Moreover, the Dutch Action is the exact sort of vexatious litigation that anti-suit injunctions are intended to prevent. In this context, “vexatious” means “without reasonable or probable cause or excuse; harassing; annoying.” *Microsoft*, 696 F.3d at 886.

[¶21] GPI filed the Dutch Action not for any reasonable or legitimate purpose, but to

harass Energy Transfer by dragging it into duplicative litigation in a foreign court and to give itself another avenue to evade liability in this case. The vexatious nature of the Dutch Action is clear from its timing: GPI sent Energy Transfer a notice of liability on the eve of the July 2024 trial date, and it initiated the Action less than a month before trial began in February 2025. Exs. A–C. In both instances, GPI appeared to float the Dutch Action as a last-ditch effort to avoid trial and undermine this case before it ever went before a jury. Even after being found liable for defamation, tortious interference, and conspiracy to the tune of roughly \$131 million in damages, GPI is plowing ahead with the Dutch Action to hedge its litigation bets in what it perceives to be a more friendly forum. See Exs. D–E. The “timing of the filing” of the Dutch Action reflects its “vexatious nature” and “raises concerns of forum shopping.” *Microsoft*, 696 F.3d at 886. Accordingly, this factor weighs in favor of an anti-suit injunction. See *id.*

C. The Dutch Action Will Result in Unnecessary Expense, Inconsistent Rulings, and a “Race to Judgment.”

[¶22] Under the fifth and final equitable factor, GPI’s Dutch Action will undoubtedly result in unnecessary expense and duplicative efforts, and it was filed for the express purpose of gaining an inconsistent ruling and creating an improper “race to judgment.” Consequently, this factor favors an anti-suit injunction against the continued prosecution of the Dutch Action. See, e.g., *Custom Polymers PET, LLC v. Gamma Meccanica SpA*, 185 F. Supp. 3d 741, 759 (D.S.C. 2016).

[¶23] To begin, the logical consequence of GPI’s Dutch Action is that Energy Transfer will be forced to relitigate the same issues that it has litigated in this Court for five years in a foreign court at significant expense, wasting not only Energy Transfer’s resources but substantial judicial resources as well. In short, Energy Transfer will be forced to litigate the same issues on multiple continents for no proper purpose other than to allow GPI another attempt to raise

arguments that have failed in this litigation. “[A]llowing simultaneous prosecution of the same action in a foreign forum thousands of miles away” will result in “inequitable hardship and tend to frustrate and delay the speedy and efficient determination of the cause.” *Custom Polymers*, 185 F. Supp. 3d at 759 (cleaned up). The Court should reject GPI’s transparent effort to inject delay and needless duplication into this case.

[¶24] Even more critically, GPI’s Dutch Action does not merely create the risk of inconsistent rulings with those handed down in this case, it was *explicitly* filed for that exact purpose. The Court need look no further than GPI’s press release issued on the day that the verdict came down in this case, in which GPI trumpeted the Dutch Action as a means of “recover[ing] all damages and costs it has suffered” in this “meritless” litigation. Ex. D at 2. GPI’s chief in-house lawyer has since stated that GPI brought the Dutch Action to stymie enforcement of the jury’s verdict:

Do Greenpeace entities really have to pay US\$660 million?

KC: No. Nor could they. Greenpeace entities don’t have that kind of money. There is no scenario in which Energy Transfer gets paid this ridiculous amount.

But also, there are many legal steps between this verdict and even the potential enforcement of it, and justice and the facts are on our side. That’s why Greenpeace International has brought a suit against Energy Transfer in the Netherlands: showing that, as a result of their abusive lawsuits, it is actually Energy Transfer that owes Greenpeace International compensation.

Ex. E at 4.

[¶25] If GPI is allowed to press on with the Dutch Action, inconsistent and absurd results could very well follow. For example, if the Court enters a judgment in favor of Energy Transfer

and the Dutch court issues a judgment in favor of GPI, Energy Transfer could be in the position of owing GPI its legal fees and other damages resulting from a supposedly “meritless” case, in which both the Court and the jury vindicated Energy Transfer and ordered GPI to pay over \$131 million in damages.⁶

[¶26] And to be clear, this inconsistency is not a remote possibility—GPI’s entire strategy in bringing the Dutch Action is to obtain a ruling branding this case as meritless in a desperate attempt to escape the consequences of the Court’s rulings and the jury’s verdict. Exs. D–E. If GPI succeeds, the parties will face the impossible task of reconciling conflicting rulings. *See Rich v. Butowsky*, No. 1:18-CV-00681, 2020 WL 7016436, at *2–3 (D.D.C. Mar. 31, 2020) (granting anti-suit injunction where issues and posture of second-filed case created heightened risk of inconsistent rulings). Considering that GPI’s chosen strategy is to create inconsistent rulings and intractable conflict, an anti-suit injunction is required. *Id.*; *see also H-D Michigan, LLC v. Hellenic Duty Free Shops S.A.*, 694 F.3d 827, 849 (7th Cir. 2012) (affirming anti-suit injunction where defendant’s “chosen strategy” was initiating a foreign action that created the “direct threat” of inconsistent rulings). In addition, GPI’s duplicative Dutch Action creates a risk of an improper “race to judgment,” in which GPI seeks to slow play the resolution of this case while seeking a judgment in the Dutch Action that it can use to avoid liability. *See Laker Airways*, 731 F.2d at 928–29 (cleaned up).

[¶27] Taken together, Energy Transfer has established that GPI’s Dutch Action is duplicative of the action pending before this Court, and that it was brought not for any legitimate

⁶ The Greenpeace Defendants have also signaled that they will file a motion for new trial under North Dakota Rule of Civil Procedure 59, which will undoubtedly include arguments that are identical to those that GPI has raised in the Dutch Action. Dkt. 5144 at ¶ 5 (“One or more of the Greenpeace Defendants may also file a Motion for a New Trial under N.D.R.Civ.P. 59”). This means that Energy Transfer is faced with the prospect of relitigating the exact same issues on two continents, with a direct threat of inconsistent rulings. The Court cannot allow this to happen. *Custom Polymers*, 185 F. Supp. 3d at 759.

purpose but to harass Energy Transfer, create the needless duplication of efforts and waste of resources, and with the goal of obtaining a ruling inconsistent from those issued in this case in a direct assault on the Court and the integrity of judicial proceedings in North Dakota. Any one of those factors would support an order enjoining GPI from proceeding with the Dutch Action, and the presence of all of them compels that result. *See, e.g., Gallo*, 446 F.3d at 990.

III. The Requested Injunction Has No Negative Impact on International Comity.

[¶28] Finally, an anti-suit injunction against the Dutch Action will have no adverse impact on international comity. Comity refers to “the recognition which one national allows within its territory to the legislative, executive, and judicial acts of another nation, having due regard both to international duty and convenience.” *Quaak*, 361 F.3d at 18–19 (quoting *Hilton v. Guyot*, 159 U.S. 113, 164 (1895)). Under the so-called “restrictive approach” to anti-suit injunctions, the Court must examine whether the equitable considerations in favor of an injunction outweigh the general presumption in favor of international comity. *Id.* Here, the risk to international comity is minimal at best, and it is substantially outweighed by the equitable considerations in favor of an injunction against GPI in any event.

[¶29] As an initial matter, no public international issues are implicated here. This case involves only private parties. No governmental entities are involved, and no international laws or treaties are implicated. Under these circumstances, courts have recognized that the threat to international comity is minimal at best. *Ganpat v. E. Pac. Shipping PTE, Ltd.*, 66 F.4th 578, 583 (5th Cir. 2023) (employing permissive approach); *BAE Sys. Tech. Sol. & Servs., Inc. v. Republic of Korea’s Def. Acquisition Program Admin.*, 195 F. Supp. 3d 776, 797 (D. Md. 2016) (employing restrictive approach).

[¶30] And, even if GPI could conjure up some threat to international comity, that threat

is greatly outweighed by the equitable considerations implicated by the Dutch Action. *See Quaak*, 361 F.3d at 20–21. In *Quaak*, the First Circuit affirmed an anti-suit injunction issued by a district court in a case involving federal securities claims against a Belgian auditor. *Id.* at 14. Dissatisfied with an order compelling it to produce documents, the auditor initiated a Belgian action to bar the production under Belgian confidentiality laws. *Id.* The auditor also requested an order subjecting the American plaintiffs to substantial monetary penalties if they sought to enforce the American court’s order compelling production. *Id.* at 15. Facing these potential penalties, the American plaintiffs obtained an anti-suit injunction preventing the auditor from proceeding with the Belgian action. *Id.*

[¶31] On appeal, the First Circuit affirmed the anti-suit injunction, despite its explicit adoption of the restrictive approach and deference to concerns of comity. *Id.* at 18–19, 22. In reaching this conclusion, the First Circuit explained that the auditor instituted the Belgian action in a “blatant attempt to evade the rightful authority of the forum court,” which strongly indicates the need for an anti-suit injunction. *Id.* at 20. The court also emphasized that the auditor, not the plaintiffs, “set the stage for a crisis of comity” by choosing to file a “foreign petition calculated to generate interference with an ongoing American case” instead of pursuing and exhausting its position in the American court system. *Id.* at 20–21. Given these equitable considerations, the First Circuit found that the need for anti-suit injunction far outweighed even the strong presumption in favor of international comity. *Id.* (“Having called the tune, it can hardly seem inequitable that [the auditor] must now pay the piper.”).

[¶32] The same considerations outweigh any comity concerns here. To begin, it was GPI, not Energy Transfer, that “set the stage for a crisis of comity” by filing the Dutch Action on the eve of trial in this case. *See id.* at 20. At the time it initiated the Dutch Action, GPI had other

options for resolving its concerns about the merits of case, the most obvious of which was presenting its defenses to a jury and exhausting them in the North Dakota court system. Instead, GPI rushed to file the Dutch Action in a blatant “attempt[] to sidetrack that system.” *Id.* at 21. Like the auditor in *Quaak*, GPI ultimately chose to launch a “frontal assault” on the Court’s authority by filing a foreign action that necessarily undermines the validity of this proceeding and conflicts with the decisions reached by the Court and the jury. *See id.* at 20. The Court cannot countenance GPI’s assault on its integrity, and it has “a right—indeed, a duty—to preserve its ability to do justice between the parties” legitimately before it in this case by issuing an anti-suit injunction. *Id.* (citing *Laker Airways*, 731 F.2d at 930).

CONCLUSION

[¶33] For these reasons, Energy Transfer respectfully requests that the Court (a) enjoin GPI from proceeding with its duplicative and vexatious Dutch Action, which threatens the legitimacy of the North Dakota judiciary, during the pendency of this case and any future appeals; and (b) direct GPI to respond to this motion within five business days and that the Court provide expedited consideration and relief on the request for an anti-suit injunction.

Dated this 22nd day of July, 2025.

FREDRIKSON & BYRON P.A.

/s/ Lawrence Bender

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*Attorneys For Plaintiffs Energy Transfer LP,
Energy Transfer Operating, L.P., and Dakota
Access, LLC*

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

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,)

Plaintiffs,)

v.)

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.)

Case No. 30-2019-CV-00180

**DECLARATION OF
JOHN T. COX III IN SUPPORT OF
PLAINTIFFS’ EMERGENCY
MOTION FOR
ANTI-SUIT INJUNCTION**

I, John T. Cox III, hereby declare and state as follows:

[¶1] I am a partner at the firm Gibson, Dunn & Crutcher, LLP, counsel to Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access, LLC (collectively, “Energy Transfer” or “Plaintiffs”) in their action against Defendants Greenpeace International, Greenpeace, Inc. and Greenpeace Fund, Inc. (collectively, “Greenpeace” or “Greenpeace Defendants”). I respectfully submit this declaration in support of Plaintiffs’ Emergency Motion for Anti-Suit Injunction. The facts and circumstances set forth herein are based on my personal knowledge and review of the file.

[¶2] Attached hereto as Exhibit A is a true and correct copy of the redacted English translation of GPI’s summons and complaint in the Dutch Action.

[¶3] Attached hereto as Exhibit B is a true and correct copy of the redacted Dutch version of GPI's summons and complaint in the Dutch Action.

[¶4] Attached hereto as Exhibit C is a true and correct copy of the Notice of Liability, dated July 23, 2024, in the Dutch Action.

[¶5] Attached hereto as Exhibit D is a true and correct copy of a Press Release titled *Jury delivers verdict finding Greenpeace entities liable for more than US\$660 million in Energy Transfer SLAPP trial*, dated March 18, 2025.

[¶6] Attached hereto as Exhibit E is a true and correct copy of a Press Release titled *Greenpeace vs. Energy Transfer's SLAPP: What happens after the North Dakota trial?*, dated April 1, 2025.

[¶7] Attached hereto as Exhibit F is a true and correct copy of excerpts from the rough draft trial transcript, dated March 17, 2025.

[¶8] I declare, under penalty of perjury under the law of North Dakota, that the foregoing is true and correct.

Signed this 22nd day of July, 2025, in Dallas, Texas.

/s/ John T. Cox III
John T. Cox III #P02743

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

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,)

Plaintiffs,)

v.)

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

Defendants.)

Case No. 30-2019-CV-00180

**[PROPOSED] ORDER GRANTING
PLAINTIFFS’ EMERGENCY MOTION
FOR ANTI-SUIT INJUNCTION**

[¶1] Before the Court is Plaintiffs’ Emergency Motion for Anti-Suit Injunction. After considering the records and files herein, and being fully advised of the matter, the Court **HEREBY GRANTS** Plaintiffs’ Emergency Motion for Anti-Suit Injunction.

[¶2] Defendant Greenpeace International is hereby enjoined from proceeding with its currently pending Dutch lawsuit against Plaintiffs during the pendency of this case and any future appeals.

[¶3] **IT IS SO ORDERED.**

Dated this ____ day of _____, 2025.

Honorable James D. Gion
District Court Judge

Exhibit A

(English translation provided for convenience only - the Dutch text is authoritative)

SUMMONS

Today, the _____ two thousand and twenty-five,

at the request of:

the **STICHTING GREENPEACE COUNCIL**, having its registered office in (1058 GV) Amsterdam at Surinameplein 118, which for this case elects domicile at the office address of Mr. E.W. Jurjens, practicing at Prakken d'Oliveira Human Rights Lawyers at Linnaeusstraat 2-A in Amsterdam (1092 CK), who is appointed attorney in this case,

I have summoned:

1. The foreign law corporation **Energy Transfer LP**, incorporated in the State of Delaware and having its office at 8111 Westchester Drive, Dallas, Texas 75225 UNITED STATES OF AMERICA; for the purpose of service, domiciled at its Registered Agent **Corporation Service Company**, located at 251 Little Falls Drive, Wilmington, Delaware 19808, United States;

therefore serving my writ on the office of the Public Prosecutor of the District Court of Amsterdam and leaving two copies of this writ as well as a translation into English with:

working there;

copy of the same also being sent to the summoned party by Fedex;

as well as by e-mail to the e-mail addresses Media@energytransfer.com and InvestorRelations@energytransfer.com;

it is requested to serve the writ in accordance with Articles 3 to 6 of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of November 15, 1965, by simple delivery or, if this is not possible, by service and notice in

accordance with the forms prescribed by the laws of the United States of America (Delaware) for the service and notification of documents, in either case with delivery of a proof of receipt;

2. The foreign law corporation **Energy Transfer Operating, L.P.**, incorporated in the State of Delaware of the United States and having its office at 8111 Westchester Drive, Suite 600, Dallas, Texas 75225, United States, for the purpose of service domiciled at its "Registered Agent" **Corporation Service Company**, located at 251 Little Falls Drive, Wilmington, Delaware 19808, United States;

therefore serving my writ on the office of the Public Prosecutor of the District Court of Amsterdam and leaving two copies of this writ as well as a translation into English with:

working there;

copy of the same also being sent to the summoned party by Fedex;

as well as by e-mail to the e-mail addresses Media@energytransfer.com and InvestorRelations@energytransfer.com;

it is requested to serve the writ in accordance with Articles 3 to 6 of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of November 15, 1965, by simple delivery or, if this is not possible, by service and notice in accordance with the forms prescribed by the laws of the United States of America (Delaware) for the service and notification of documents, in either case with delivery of a proof of receipt;

3. The foreign law corporation **Dakota Access LLC**, located in the State of Delaware of the United States and having its office at 1300 Main Street Houston, Texas 77002-6803, United States, for the purpose of service domiciled at its "Registered Agent" **Corporation Service Company**, located at 251 Little Falls Drive, Wilmington, Delaware 19808, United States

therefore serving my writ on the office of the Public Prosecutor of the District Court of Amsterdam and leaving two copies of this writ as well as a translation into English with:

working there;

copy of the same also being sent to the summoned party by Fedex;

as well as by e-mail to the e-mail addresses Media@energytransfer.com, InvestorRelations@energytransfer.com and [REDACTED]

it is requested to serve the writ in accordance with Articles 3 to 6 of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of November 15, 1965, by simple delivery or, if this is not possible, by service and notice in accordance with the forms prescribed by the laws of the United States of America (Delaware) for the service and notification of documents, in either case with delivery of a proof of receipt;

to appear on **Wednesday, July 2, 2025 at 10:00 a.m.**, not in person but represented by an attorney, at the hearing of the District Court of Amsterdam, at Parnassusweg 280 in (1076 AV) Amsterdam, Netherlands;

WITH NOTICE THAT:

- a. if a defendant fails to designate an attorney or fails to pay the court fee hereinafter specified in due time, and the prescribed time limits and formalities have been observed, the court shall grant default against such defendant and award the claim hereinafter described, unless it appears to the court to be unlawful or unfounded;
- b. if at least one of the defendants appears in the proceedings and has paid the court fee in a timely manner, a single judgment will be rendered between all parties, which will be considered an adversary judgment;
- c. on appearing in the proceedings, a court fee will be charged to each of the defendants, payable within four weeks from the time of appearance;
- d. the amount of court fees is listed in the most recent appendix belonging to the Court Fees (Civil Cases) Act (*Wet griffierechten burgerlijke zaken*), which can be found on the website: www.kbvg.nl/griffierechtentabel, among others;
- e. an impecunious defendant is charged a court fee for impecunious persons established by or in accordance with the law, if at the time the court fee is charged he has submitted:
 1. a copy of the legal aid award, as referred to in Article 29 of the Legal Aid Act (*Wet op de Rechtsbijstand*), or if this is not possible due to circumstances not reasonably attributable to it, a copy of the application, as referred to in Article 24(2) of the Legal Aid Act, or

2. a statement from the board of the Legal Aid Council, referred to in Article 7, third paragraph, subsection e, of the Legal Aid Act, showing that its income does not exceed the incomes referred to in the governmental decree under Article 35(2) of that Act;
- f. a joint court fee is levied only once on defendants who appear through the same lawyer and make identical submissions or present identical defenses, based on Article 15 of the Court Fees (Civil Cases) Act;
- g. the plaintiff and defendants are required under Article 21 of the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*) to fully and truthfully plead the facts relevant to the court's decision;
- h. based on Article 149 of the Code of Civil Procedure, the court must consider as established facts or rights asserted by a party and not challenged or not sufficiently challenged by the other party or parties, subject to the court's power to require evidence, whenever acceptance of the assertions would lead to a legal effect that is not at the discretion of the parties;
- in order to, at the aforesaid hearing, hear claims and conclusions being presented in accordance with the following:

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1 INTRODUCTION

1. In November 2016, the Stichting Greenpeace Council (also known as Greenpeace International, hereinafter "**GPI**"), along with more than 500 other organizations, signed an open letter by the reputed Dutch NGO, BankTrack. The letter called on financiers of a highly controversial oil pipeline, which at the time was under construction in North Dakota, United States, to put on hold their financial support for this project until the serious concerns of the Standing Rock Sioux Tribe about the project were resolved to their full satisfaction.
2. Supporting this call was a legitimate and perfectly ordinary act of public participation, in the context of a debate of public interest. Everyone is entitled to have an opinion on such issues and to express them publicly. That is the essence of healthy and pluralistic public debate, which is an essential pillar of a well-functioning and free democratic society.
3. The co-signing of BankTrack's open letter is the sole evidence on the basis of which the defendants (collectively, "**Energy Transfer**") have twice dragged GPI before U.S. courts.¹ These successive, extremely costly proceedings have now dragged on for more than seven

¹ Along with several other defendants, who are equally blameless.

years. Defendants are demanding payment of at least \$300 million in damages. In addition they demand legal fees, which are also expected to reach tens of millions of dollars.

4. For people unfamiliar with these cases, this may sound like the synopsis of a bad and overly dramatic Netflix series. The reaction GPI often hears when it speaks out about these cases is: surely this can't be true, isn't there more to it? Surely a company would not spend years and millions of dollars pursuing GPI for allegedly "participating in a criminal organization," having an "extremist agenda," conducting a "campaign of misinformation," "defrauding donors," and "violent attacks against Energy Transfer employees"² - just because of co-signing one letter? Isn't freedom of expression considered almost sacred in the United States?
5. GPI naturally understands this initial reaction: it is also a bizarre situation and the claims are completely unfounded. But the case does not stand alone. Not even nearly.
6. Indeed, Energy Transfer is using a tried and true recipe here. The use of legal power play by powerful and wealthy parties against public watchdogs, such as the media and NGOs, to silence them, exhaust them financially, and thus create a "chilling effect" has been commonplace for many years, and it is a problem that GPI has also been confronted with on numerous occasions. In the last century, American academics who studied this phenomenon coined the term "Strategic Lawsuits Against Public Participation" to describe it.³ The apt acronym is: "**SLAPP**."
7. In a 1989 paper, Prof. George W. Pring, who coined the term with Prof. Penelope Canan, concluded that SLAPPs in the United States were "frighteningly common" and that "there is no dearth of victims: in the last two decades, thousands of citizens have been sued into silence." The smallest act of public participation can give rise to costly and lengthy litigation: Prof. Pring cites examples including "circulating a petition," "support[ing] a public interest, law-reform lawsuit" and "speak[ing] up at a school board meeting about a bad teacher or unsafe brakes on school buses." He noted that the purpose of a SLAPP is different from a regular lawsuit:

"The apparent goal of SLAPPs is to stop citizens from exercising their political rights or to punish them for having done so. SLAPPs send a clear message: that there is a "price" for speaking out politically. The price is a multimillion-dollar lawsuit and the expenses, lost resources, and emotional stress such litigation brings. This is a message with import for every American, activist or not. As these suits become an increasing (and increasingly known) risk for the ordinary citizen who decides to speak out on a public issue, SLAPPs raise substantial concern for the future of citizen involvement or public participation in government, a fundamental precept of representative democracy in America."
8. Prof. Pring puts it aptly. "There is a price for speaking out." Kelcy Warren, co-founder and major shareholder of Energy Transfer, has said in the media about the lawsuits against GPI:

"Everybody's afraid of these environmental groups and the fear that it may look wrong if you fight back (...) but what they did to us is wrong, and they're going to pay for it [...] They're going to pay for this, they're going to pay for this."

² This is only a limited anthology of the serious allegations Energy Transfer has made against GPI in lawsuits and public utterances in recent years.

³ Among others by Prof. George W. Pring, see: George W. Pring, SLAPPs: Strategic Lawsuits against Public Participation, 7 Pace Env'tl. L. Rev. 3 (1989). DOI: <https://doi.org/10.58948/0738-6206.1535>. The citations in the rest of this introduction are also taken from this paper.

9. The price GPI has been paying for co-signing a letter in 2016 is being drawn into unsubstantiated, protracted and extremely costly litigation by Energy Transfer for over seven years and counting. In large parts of the United States and in Europe, there is a broad consensus among lawmakers that no party should pay such a price for legitimate and ordinary participation in the public debate. They correctly signal - as does Prof. Pring in the above quote - that SLAPPs pose a serious threat to a democracy.
 10. Therefore, many states in the U.S. have had legal protection in place against SLAPPs for years (though not in the state where GPI was sued by Energy Transfer). In Europe, too, laws and regulations have been passed in recent years to protect the media, NGOs and other 'public watchdogs' from SLAPPs. An element of these laws and regulations is that it should be possible in any EU Member State to ask the national courts for protection against SLAPPs brought outside the EU against a public watchdog based in that Member State.⁴ The Dutch government confirmed late last year that these forms of protection against SLAPPs are already possible under applicable Dutch law.
 11. In the present case, GPI, to its knowledge for the first time in the EU, is asking the court in its country of domicile to protect it from these SLAPPs in a third country (i.e., the U.S.). In this case, GPI seeks, *inter alia*, a declaratory judgment, compensation for costs and damages suffered as a result of the SLAPPs brought against it, and publication of the judgment to be rendered in this case (see Explanation of the demands, para. 8) on the factual (para. 2-3) and legal (para. 4-7) bases to be discussed below.
 12. As this summons will show, the importance of this case to GPI is enormous. In addition, this case will also send an important signal. EU-based media, NGOs and other public watchdogs are deeply affected by SLAPPs inside and outside the EU (another example is the UK). It is the clear intention of European and Dutch legislators to offer far-reaching protection to targets of SLAPPs. For the realization of this practical and effective protection, national judges play a crucial role. For this reason, too, GPI requests your Court to grant the claims brought in this case.
 13. The exhibits mentioned in this summons have been served together with the summons and will be brought into the proceedings together with the summons on the first court date.
- 1.1 Plaintiff**
14. The plaintiff in this case, Stichting Greenpeace Council, also operating under the name Greenpeace International ("**GPI**") is an Amsterdam-based foundation with Public Benefit Organization (*ANBI*) status. GPI's statutory objective is promoting the conservation of nature (Article 3 of GPI's Articles of Association, **Exhibit 1**). An extract of GPI's entry in the Business Register is submitted as **Exhibit 2**.
 15. GPI coordinates the Greenpeace network, which in addition to GPI consists of 25 independent national and regional organizations ("**NROs**"). These NROs are independent legal entities and have their own boards, which are independent of GPI. The network uses peaceful, creative confrontation to expose global environmental problems, and develop solutions for a green and peaceful future. GPI facilitates the development of a long-term strategic campaign program for the Greenpeace network (called the "Framework"). Based on this campaign program, the NROs independently develop and implement projects in their territories. In addition, GPI is the holder of Greenpeace's registered trademarks, and licenses

⁴ Article 17(1) Directive (EU) 2024/1069 of the European Parliament and of the Council of April 11, 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation')

the NROs to use (among other things) the GREENPEACE mark.⁵ Greenpeace's core values include nonviolence and independence. Greenpeace organizations do not accept donations from governments and businesses.

1.2 Defendants

16. Defendant 1, Energy Transfer, L.P. is a corporation under foreign law, namely, the law of the State of Delaware (United States). Defendant 2, Energy Transfer Operating, L.P. is also a corporation under foreign law, namely the law of the State of Delaware. Previously, they operated under the trade names Energy Transfer Equity, L.P. (Defendant 1) and Energy Transfer Partners, L.P. (Defendant 2), respectively.⁶ Defendant 3, Dakota Access, LLC, is also a corporation under foreign law, namely the law of the State of Delaware. Although all of the Defendants (also) have offices in Dallas, Texas, they are incorporated in the State of Delaware, as follows from respective extracts of their registrations in the official records of the Division of Corporations of the State of Delaware (**Exhibit 3**). Of particular note here is that, as follows from the register of this Division which can be accessed online, Defendants all use what is known as a "Registered Agent" (**Exhibit 4**), namely the Corporation Service Company. Upon clicking on the term "Registered Agent" in this online register, the following explanation of this term appears (**Exhibit 5**):

"Every corporation shall have and maintain in this State a registered agent in each case, having a business office which generally is open during normal business hours to accept service of process and otherwise perform the functions of a registered agent. Such agent may be an individual or business entity authorized to transact business in the State of Delaware. The data presented in this field denotes the agent name, address and phone number of such agent for the entity you are viewing."

17. The Registered Agent is thus, GPI understands, an agent authorized on behalf of another party to accept documents for service on that party. Therefore, GPI has served this summons and the attached exhibits (also) on this Registered Agent, namely the Corporation Service Company.
18. Defendants all belong to the same corporate group. Defendant 1 is the parent company of Defendant 2. Defendant 2 in turn is a majority shareholder in Defendant 3. Defendants will hereinafter be collectively referred to as "**Energy Transfer**."
19. Energy Transfer's core business is the transportation and storage (temporary or otherwise) of fuels such as gas and oil.⁷ Energy Transfer owns (or claims) the largest network of pipelines to transport these fuels in the United States.

⁵ See also: <https://www.greenpeace.org/international/about/structure/>.

⁶ In this regard, see Energy Transfer press release dated Oct. 19, 2018, "Energy Transfer Equity, L.P. and Energy Transfer Partners, L.P. Complete Merger, Simplify Structure," at: <https://ir.energytransfer.com/news-releases/news-release-details/energy-transfer-equity-lp-and-energy-transfer-partners-lp>: "Energy Transfer Equity, L.P. ("ETE") and Energy Transfer Partners, L.P. ("ETP") today announced the completion of their previously announced merger of ETE with ETP. (...) As part of the merger, ETE changed its name to "Energy Transfer LP" and its common units will begin trading on the New York Stock Exchange ("NYSE") under the "ET" ticker symbol at the opening of the market today. In addition, ETP changed its name to "Energy Transfer Operating, L.P."

⁷ See: <https://www.energytransfer.com/about/>

2 **FACTS: BACKGROUND**

2.1 **The controversy surrounding the Dakota Access Pipeline (DAPL)**

20. In 2014, Energy Transfer began preparations for the construction of a nearly 2,000-kilometer underground oil pipeline running from North Dakota to Illinois. This highly controversial pipeline has come to be known as the "Dakota Access Pipeline" (hereafter "**DAPL**").
21. In the original plans, DAPL was to pass under the Missouri River upstream of Bismarck (North Dakota's capital city). However, when relevant authorities became aware of the planned route, they expressed concerns that an oil spill at that location would jeopardize the water supply for Bismarck.⁸ The proposed route was then shifted south, downstream of Bismarck. This can be clearly seen on the map by Vox Media submitted as **Exhibit 6**.
22. However, the alternative route for DAPL also proved highly controversial. Energy Transfer rerouted the pipeline through land which is "unceded Indian territory" according to 19th century treaties. The proposal called for a crossing of the Missouri River one half mile upstream from the Standing Rock Sioux Tribe's current reservation, below Lake Oahe, a reservoir in the river.
23. For an understanding of why the proposed route for DAPL led to so much concern among Indigenous Peoples in the area, it is helpful to provide an outline of their history with the U.S. government. GPI claims no expertise on the subject; the following is an attempt to succinctly summarize the facts as they emerge from a court filing by the Standing Rock Sioux Tribe.
24. The Standing Rock Sioux Tribe is part of a larger Native Nation, the Oceti Sakowin Oyate (Lakota for "Seven Council Fires"), or, in English, the Great Sioux Nation. The Tribe's ancestors entered into two major treaties with the United States in the 19th century. In the 1851 Fort Laramie Treaty, the United States recognized a large area south of the Heart River as Sioux Country. Beginning in 1864, however, gold prospectors passing through caused increasing disturbance in important buffalo hunting grounds. The resulting conflict was settled in 1868 with a new Fort Laramie Treaty. This treaty established the Great Sioux Reservation. Areas that were designated as Sioux territory in the 1851 treaty, but now fell outside the Great Sioux Reservation, were designated as "unceded Indian territory" in Article XVI of the treaty.⁹ See in this connection the map submitted as Exhibit 6 where a relevant part of this area is marked.
25. The peace was not to last long. In 1874, American soldiers found gold during an expedition to the sacred Black Hills, within the Great Sioux Reservation. The Sioux refused to sell the hills to the federal government, after which war broke out again. The Cheyenne and Sioux (led, among others, by the famed Sitting Bull) inflicted a crushing defeat on government troops at the Battle of the Little Bighorn. Eventually, the United States succeeded in imposing its will. The U.S. Congress passed an act in 1877 that removed the Black Hills from the Great Sioux Reservation. Then, in 1889, Congress established new boundaries for a number of smaller reservations, including the Standing Rock Sioux Reservation.¹⁰ The Great Sioux Nation never recognized these unilateral, treaty-breaking acts. The U.S. Supreme Court ruled in 1980 that "A more ripe and rank case of dishonorable dealings will never, in all probability, be found in our nation's history" and awarded compensation for what it designated as a taking of the

⁸ New Yorker, Sept. 6, 2016, "A Pipeline Fight and America's Dark Past,"

<https://www.newyorker.com/news/daily-comment/a-pipeline-fight-and-americas-dark-past>.

⁹ Standing Rock Sioux Tribe v. U.S. Army Corps Engineers and Others, Complaint of Oct. 14, 2024, paras. 23-25.

¹⁰ Standing Rock Sioux Tribe v. U.S. Army Corps Engineers and Others, Complaint of Oct. 14, 2024, para. 26.

Black Hills.¹¹ The Sioux never collected this compensation because they do not recognize the legal validity of the taking.

26. Later, for the construction of Lake Oahe in the 1960s, large portions of the Standing Rock Sioux Reservation and the Cheyenne River Reservation were flooded by the authorities and the inhabitants of the area were forced to leave. For more background on this, see **Exhibit 7**, a 2016 federal complaint by the Standing Rock Sioux Tribe against the US Army Corps of Engineers.
27. Given this history, it is obvious that construction of DAPL on land that the Sioux regard as "unceded Indian territory" is contentious. Moreover, the Standing Rock and Cheyenne River Sioux Tribes rely on the waters of Lake Oahe in many ways, including for drinking water, agricultural purposes, industry, and sacred religious and medicinal practices. Both Tribes consider the waters to be sacred and central to their practice of religion. Thus, as in Bismarck, significant concerns arose about the impact of the pipeline on the Tribe's water ahead of the construction of DAPL. There were also concerns that construction of DAPL could result in damage to ancient burial grounds or other sites of cultural or historical importance to the Tribe.
28. In March 2016, Energy Transfer already began construction of DAPL, even though it did not yet have the necessary permits and easements to do so. In April 2016, tribal members set up prayer encampments near Cannonball, North Dakota, as a focal point for opposition against DAPL. Soon the opposition found resonance and the demonstrations steadily grew after April 2016.
29. The governing authority, the US Army Corps of Engineers (USACE), granted Energy Transfer a permit to construct DAPL under Lake Oahe on July 25, 2016, despite Tribal concerns. This was perceived by the Water Protectors and allies as a stark contrast to the situation around Bismarck, where identical concerns about the water supply had led the authorities to reroute DAPL, as discussed. On July 27, 2016, the Standing Rock Sioux Tribe filed a lawsuit against the USACE for issuing the permit (see Exhibit 7, the "federal complaint"). Significantly, in addition to a permit, an easement was required to drill under the river: this had not yet been granted by the USACE at that time.
30. Meanwhile, the prayer camps continued and grew larger as construction of DAPL progressed. In mid-August 2016, the Standing Rock Sioux Tribe's Tribal Council put out a public call for support to the Indigenous communities of the United States. More than 300 Indigenous Tribes and thousands of non-Indigenous supporters joined the resistance. Around this time, Dakota Access, LLC sued the Tribe's chairman Dave Archambault, another member of the Tribal council, and a number of individuals, alleging trespass and interference with its construction activities. The federal court promptly dismissed the case, stating, "Dakota Access' assertions that the Defendants proximately caused it losses of over \$75,000 are the kind of 'naked assertion[s] devoid of further factual enhancement,' which are insufficient to form the basis of a complaint."¹²
31. The demonstrations were largely peaceful, but during the period August-November 2016, there were several confrontations between the protesters on the one hand, and law

¹¹ United States v. Sioux Nation of Indians, 448 U.S. 371 (1980).

¹² Order dated May 18, 2017, following defendants' motions to dismiss, available at: <https://waterprotectorlegal-org.nyc3.cdn.digitaloceanspaces.com/production/app/uploads/2017/05/2017.05.18-Order.pdf>.

enforcement and the private security company TigerSwan hired by Energy Transfer to guard the work around the DAPL project, on the other.¹³

32. As part of the its lawsuit against the Army Corps of Engineers, on Sept. 2, 2016, the Standing Rock Sioux Tribe filed a sworn declaration in court by Tim Mentz Sr., a member of the Tribe and operator of a business in North Dakota that identifies for many infrastructure projects the location of historical cultural artifacts of the Indigenous tribes in the area. The declaration included detailed information about burial grounds and resources of cultural significance located in and along DAPL's path (including GPS data). Part of the questions raised by the litigation brought by the Standing Rock Sioux Tribe was whether Energy Transfer had the right to construct DAPL through these sites. So there was an ongoing debate about that in the proceedings between the parties, with the Tribe's perspective being that the proposed route of DAPL crossed places of historical and cultural importance.
33. Within 24 hours of the filing of this declaration - on a Saturday - Energy Transfer had bulldozers grade the area in which these sites were located. Hundreds of Indigenous protesters tried to prevent this but were met with attack dogs and pepper spray.¹⁴ This aggressive conduct of the private security company hired by Energy Transfer attracted much controversy and (inter)national media attention, which also increased the size of the demonstrations (**Exhibit 8** - article in The Guardian from November 2016 about the demonstrations).
34. In early December 2016, the USACE announced it was refusing to grant the necessary easement to Energy Transfer. Therefore, construction of DAPL could not proceed. However, after Donald Trump took office in 2017, he issued an Executive Order instructing the USACE to after all provide the required easement. The USACE did just that. The construction of DAPL was then completed, and the pipeline became operational in June 2017. Incidentally, Trump signed this Executive Order just four days after his inauguration. Kelcy Warren, co-founder and major shareholder of Energy Transfer, donated USD 250,000 for the inauguration, having already donated USD 100,000 to Trump's joint fundraising operation, Trump Victory.¹⁵
35. However, litigation over DAPL continues to this day, and there is a possibility that the outcome will be that DAPL will after all need to be rerouted. In 2020, a federal judge ruled in the case brought by the Standing Rock Sioux Tribe that the Army Corps of Engineers should have prepared an Environmental Impact Statement (EIS); vacated the easement granted for construction under the Missouri River, and ordered the pipeline shut down. This decision was affirmed on appeal, except that the Court of Appeals reversed the order for the pipeline to cease operations. The EIS proceeding is still ongoing. Meanwhile, the Tribe has again gone to court and is seeking the shutdown of the pipeline. In its suit, the Tribe cites, among other things, the lack of the required easement, the intentional destruction of burial sites, and the fact that Energy Transfer is currently debarred from federal contracts due to "a lack of

¹³ In doing so, the TigerSwan company employed military tactics and attempted to infiltrate the protesters, as it later turned out. In this context, see ACLU June 2, 2017, "Why Did a Private Security Contractor Treat Standing Rock Protesters Like 'Jihadists'?", <https://www.aclu.org/news/free-speech/why-did-private-security-contractor-treat-standing-rock>.

¹⁴ Indian Country / Today MediaNetwork.com September 4, 2016, "Manning: 'And Then the Dogs Came': Dakota Access Gets Violent, Destroys Graves, Sacred Sites," archived via the Internet Archive WayBack Machine: <https://web.archive.org/web/20161213104458/http://indiancountrytodaymedianetwork.com/2016/09/04/manning-and-then-dogs-came-dakota-access-gets-violent-destroys-graves-sacred-sites-165677>.

¹⁵ E&E News May 9, 2024, 'Billionaire Kelcy Warren invests in pipelines - and Trump', <https://www.eenews.net/articles/billionaire-kelcy-warren-invests-in-pipelines-and-trump/>.

business honesty or integrity,"¹⁶ following criminal convictions after serious environmental incidents during the construction of another pipeline.

3 **FACTS: ROLE OF GPI AND LAWSUITS ENERGY TRANSFER V. GPI**

3.1 **The signing of the BankTrack open letter by GPI and the role of Greenpeace, Inc.**

36. The demonstrations against DAPL attracted worldwide attention and were supported in various ways by a variety of organizations. On November 30, 2016, the Dutch NGO BankTrack supported the opposition to the construction by publishing an open letter addressed to the financiers of DAPL, a consortium of financial institutions led by Citibank. This letter is presented as **Exhibit 9**.
37. The letter presents the situation surrounding DAPL outlined above, and on that basis demands that the financial institutions suspend loan disbursements until construction work on the pipeline has been put on hold and all outstanding issues have been resolved to the full satisfaction of the Standing Rock Sioux Tribe. The letter was co-signed by more than 500 organizations from more than 50 countries. A random sample: they include organizations such as the Center for International Environmental Law (US), Friends of the Earth International (worldwide), the Norwegian Saami Association (Norway), Re:common (Italy), Urgenda (Netherlands) and several organizations from the Greenpeace network, including GPI (see Exhibit 9, p. 9)
38. Signing BankTrack's open letter was the entirety of GPI's involvement with the opposition to DAPL. One of the two U.S. Greenpeace entities, Greenpeace, Inc. ("**GP Inc.**"), provided limited support as requested by the Indigenous Tribes.
39. Specifically, this support consisted of a US\$15,892 donation to enable five Indigenous trainers from the organization Indigenous Peoples Power Project ("**IP3**") to spend two weeks training protesters in the history and principles of Non-Violent Direct Action. One of these trainers was also an employee of GP Inc. The IP3 trainings followed principles developed by IP3 and the Standing Rock Sioux Tribal Council. Participants were required to acknowledge "Direct Action Principles" which were displayed on a large sign. Peacefulness, prayer and nonviolence were chief among these, as well as rejection of property damage as something that "does not get us closer to our goal."
40. In addition, GP Inc. provided supplies to the encampments, partly gathered through a donation drive. These mainly consisted of camping equipment, food, clothing, paint, a vehicle with solar panels for electricity and Internet access, a first aid kit, and a number of passive restraint devices known as "lockboxes" - plastic tubes with metal pins, though there is no evidence they were used or caused any harm. A total of six GP Inc. staff members travelled to the site (out of an estimated 100,000 attendees), helping with tasks such as setting up tents, winterizing the camp. The first arrived on Sept. 5, 2016, five months after the protests began, and there were never more than three GP Inc. staff members on site concurrently. The last one left in late December. GPI was not involved in these activities at all and was not even aware of them until late October 2016. GPI also did not provide financial support for the demonstrations.

¹⁶ See "Exclusion: Energy Transfer L.P., U.S. General Services Administration," <https://sam.gov/exclusions-new?pirKey=478731&pirValue=1667217418431194>.

3.2 The Federal Lawsuit: 2017-2019

41. On August 22, 2017, Energy Transfer filed a suit in the Federal District Court in North Dakota against BankTrack, twenty John and Jane Does, EarthFirst!, Greenpeace Fund, Inc., GPI and GP Inc. (the "Federal Lawsuit").¹⁷ GP Inc. is the independent U.S. NRO within the Greenpeace network, which, as described above, played a limited role in the demonstrations against DAPL. Greenpeace Fund, Inc. is a separate non-profit entity that, consistently with its mission, supports certain activities of GP Inc., in particular by providing funds. Greenpeace Fund, Inc. - like GPI - had no involvement at all in the protests.
42. The Federal Lawsuit was based on the Racketeer Influenced and Corrupt Organizations Act, or RICO Act, and some North Dakota state laws. The RICO Act is a federal law that provides a basis for civil suits when a party is the target of acts committed as part of a criminal organization.
43. In a judgment dated July 25, 2018, the Federal Court dismissed the case against BankTrack after an initial review because the complaint failed to state a cognizable claim, nor grounds for the exercise of personal jurisdiction. A day later, the Court ordered Energy Transfer to clarify the grounds of its case against the defendant Greenpeace entities by filing an Amended Complaint. With respect to EarthFirst!, among other things, service requirements were found not to have been met, and the Court also dismissed the case against that party (Order of August 22, 2018).
44. Energy Transfer filed its Amended Complaint on June 8, 2018, a document which is submitted as **Exhibit 10**. It is a 77-page filing in which Energy Transfer expounds the following conspiracy theory (Exhibit 10, p. 10):

"Since no later than July 2016, Energy Transfer has been the target of a malicious and hostile campaign arising from its development, construction, and operation of DAPL (...) The campaign against Energy Transfer was conducted by an illegal Enterprise comprised of various legally distinct but associated-in-fact environmental organizations, individuals, and others who worked in concert with one another for the purpose of carrying out the pattern of racketeering activity directed at stopping DAPL and funding themselves and other enterprise members executing the predicate acts."
45. GPI, along with the other defendants, was alleged to be part of this "illegal Enterprise" and, as part of this alleged "Enterprise," was accused in the filing of, among other things, having a "history of engaging in property destruction and criminal sabotage in pursuit of its manufactured causes," spreading "false, misleading and manufactured claims about Energy Transfer and DAPL (...) for the purpose of fraudulently inducing donations to fund these activities and harm Energy Transfer", "manufactur[ing] and disseminat[ing] six categories of misinformation which were intentionally and expressly marketed to the public as 'facts', based on 'research' and 'science' (...)", disseminating 'misinformation' with the aim "to fraudulently mislead and incite members of the public to criminal trespass, violence and property destruction", using its financial resources "to directly and indirectly support these criminal activities", recruiting and financing "violent elements from out-of-state to descend on North Dakota" and publishing "knowingly and intentionally" "false and injurious statements" about Energy Transfer, which were allegedly published with "actual malice" (see Exhibit 10, p. 14-15 and from p. 69).

¹⁷ United States District Court, District of North Dakota, Case 1:17-cv-00173-BRW-CRH (*Energy Transfer v. BankTrack et al*).

46. These allegations were based on nothing and were pure fiction. As explained above, at the time the Federal Lawsuit was filed against it, GPI had done nothing more than co-signing, along with more than 500 other organizations, an open letter by BankTrack. There was and is no legitimate reason for Energy Transfer to sue GPI (or for that matter the other Greenpeace organizations).
47. Energy Transfer claimed, in the Amended Complaint, to have suffered no less than USD 300 million in damages (Exhibit 10, p. 62) as a result of GPI's alleged 'participation in a criminal enterprise' (for which there is and was thus no basis whatsoever). Moreover, Energy Transfer asserted it was entitled to treble damages (Exhibit 10, p. 62), so the RICO damages claim totaled at least USD 900 million (Exhibit 10, pp. 62 and 64). Apparently separate from this (this is not abundantly clear from the claims), Energy Transfer claimed also have suffered USD 300 million in damages as a result of alleged 'defamation' by GPI (Exhibit 10, p. 70). In addition to these amounts, Energy Transfer also claimed that its costs, including its attorney fees, were eligible for reimbursement. Attorney's fees in the United States can be sky-high compared to attorney's fees in the Netherlands, as is common knowledge.
48. Given the bizarre and baseless nature of the Federal Lawsuit, GPI, GP Inc. and Greenpeace Fund filed a Motion to Dismiss for Failure to State a Claim, requesting that the case be thrown out without further substantive hearing. By order dated February 14, 2019, the Federal Court granted this request, finding that the strict requirements for early dismissal of the case had been met. This February 14, 2019 Order is submitted as **Exhibit 11**.
49. In the Order, the judge gave short shrift to Energy Transfer's claims. At pp. 7-12, the judge briefly summarizes the complaints, "stripping away the hyperbole," and succinctly finds with respect to all of the RICO Act-based complaints that they are manifestly without merit. With the claim based on federal law failing, the federal court decided not to retain jurisdiction over the additional claims under North Dakota law. The Federal Lawsuit against GPI et al. thus came to an end.
50. Unfortunately, however, this was not the end of Energy Transfer's legal campaign against GPI.

3.3 The State Lawsuit: 2019-present

51. On Feb. 21, 2019, a week after the Federal Lawsuit was dismissed, Energy Transfer commenced a second lawsuit against GPI and others in the Morton County District Court, and thus in state court. This case will hereafter be referred to as the "**State Lawsuit**."¹⁸ The Complaint in this case dated February 21, 2019 is submitted as **Exhibit 12**. GPI is the first named defendant therein: the other defendants are GP Inc., Greenpeace Fund, Inc. and four others. BankTrack and EnergyFirst! are not defendants in the State Lawsuit.
52. Over the years, Energy Transfer has amended and reduced its claims. For example, it has withdrawn its case against one defendant, an individual employee of GP Inc., and has significantly shortened the list of allegedly defamatory statements made by the defendants in the State Lawsuit, from 82 to 9. However, Energy Transfer wrongly has not withdrawn its case against GPI. Energy Transfer's Second Amended Complaint, dated March 6, 2024, shows the current scope of the State Lawsuit. This document is submitted as **Exhibit 13**.

¹⁸ GPI notes that in the Federal Lawsuit, Dakota Access LLC was not a plaintiff, but Energy Transfer Partners, L.P. (the legal predecessor of Energy Transfer Operating, L.P.) as a majority shareholder of Dakota Access was. This is explained by the plaintiffs in the Federal Lawsuit in their First Amended Complaint, see Exhibit 10, par. 25

53. Energy Transfer (once again) makes very serious allegations in the Second Amended Complaint against the defendants, including GPI.¹⁹ A sample of the allegations (page numbers refer to Exhibit 13):
- a. GPI allegedly engaged in an "unlawful and violent scheme to cause financial harm to Energy Transfer and Dakota Access, to cause physical harm to their employees and infrastructure, and to disrupt and prevent the companies' construction of the [DAPL]" (p. 1);
 - b. GPI allegedly committed "violent attacks against Plaintiff's employees and property" and was guilty of "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" (p. 1-2);
 - c. GPI allegedly has an "extremist agenda," which it allegedly carries out "through means far outside the bounds of democratic political action, protest and peaceful, legally protected expression of dissent," and even through "militant direct action" including "trespass," "unlawful invasion," "violent and destructive attacks," "arson" and "intimidation, harassment and assault of Plaintiffs' employees" (p. 2);
 - d. GPI is said to be the evil genius behind "large-scale, intentional dissemination of misinformation and outright falsehoods regarding both Energy Transfer and Dakota Access (...)" and "a defamatory campaign to interfere with and, indeed, destroy Energy Transfer and Dakota Access's relationships with investors, financiers, and other constituents." (p. 3);
 - e. GPI's conduct, according to Energy Transfer, does not qualify as a protected contribution to public debate, but is allegedly "designed to inflict damage, cause delay, defame Energy Transfer and Dakota Access, and disrupt their operations as much as possible" (p. 5), and furthermore aims "[to raise funds] to further their anti-DAPL agenda" (p. 11);
 - f. GPI allegedly engaged in (I) trespass to land and chattel; (II) aiding and abetting trespass to land and chattel; (III) conversion; (IV) aiding and abetting conversion; (V) nuisance; (VI) aiding and abetting nuisance; (VII) defamation; (VIII) tortious interference with business relations; and (IX) civil conspiracy;
 - g. Energy Transfer still takes the position that a legal duty exists for GPI and the other Greenpeace defendants to pay it at least \$300 million in damages. Energy Transfer arrives at this astronomical amount by advancing bizarre categories of damages, such as nearly \$100 million because USACE granted the required easement later than expected. Energy Transfer has additionally indicated that it will seek a yet to be determined amount of exemplary damages. Such damages can be awarded if there is "clear and convincing evidence of oppression, fraud, or actual malice," against the defendant, and can be up to twice the amount claimed in damages - i.e. USD 600 million. In addition, Energy Transfer is demanding reimbursement of its full legal costs, which are expected to run to tens of millions of dollars, and interest on all these items.
54. These allegations are completely unfounded. GPI emphasizes again that it did nothing more than co-sign - along with more than 500 other organizations - a letter by BankTrack.

¹⁹ The same allegations are made (in large part) against the other defendant Greenpeace entities, and in part against BankTrack. BankTrack is not a party to the State Lawsuit. This further underscores the incongruity of Energy Transfer's case against GPI.

Moreover, Energy Transfer's accusations are also completely unfounded with respect to the other defendant Greenpeace entities.

55. As explained above, Energy Transfer, in its Second Amended Complaint, makes sweeping and exaggerated assertions about GPI and the other defendants. However, it then completely fails to elaborate more specifically on exactly what the respective roles of GPI, the other Greenpeace entities and unrelated third parties allegedly were in any wrongful conduct, and to demonstrate a causal connection to the alleged damages. Only on one point does Energy Transfer elaborate on its contentions, and that is on the issue of GPI's allegedly defamatory statements. Energy Transfer has significantly reduced the list of these allegedly defamatory statements over the course of the State Lawsuit as explained above, and it now includes two statements that Energy Transfer links to GPI. These are listed in the "Second Amended Appendix A - Greenpeace False Statements" (**Exhibit 14**).
56. Concretely, it concerns two sentences from BankTrack's open letter of Nov. 30, 2016, which incidentally repeat findings from a report by an expert member of the United Nations Permanent Forum on Indigenous Issues. In Energy Transfer's presentation of these statements, it is immediately noticeable that the 'Author' column states "Joint letter, signed by Banktrack; Greenpeace France; Greenpeace International; Greenpeace Netherlands; Greenpeace USA" (Exhibit 14). This open letter from BankTrack, co-signed by hundreds of other organizations, qualifies as a legitimate contribution to a debate of public interest and is without question a legitimate exercise of the right to freedom of expression of BankTrack and the co-signatories as 'public watchdogs' (see below). Moreover, it is striking that BankTrack, the lead author of the open letter, and the more than 500 co-signatories were not (also) sued by Energy Transfer in the State Lawsuit. There is nothing to suggest that GPI - which is mentioned somewhere in the middle of the pages-long alphabetically arranged list of co-signatories - ought to bear any special responsibility as a result of co-signing the open letter, which, as stated, is in any event entirely legitimate. This clearly shows Energy Transfer's intent to specifically harm GPI and the Greenpeace network by filing the State Lawsuit against it alone.
57. After years of discovery, Energy Transfer has not yet been able to provide the beginnings of evidence of GPI's involvement in the other serious and mostly criminal acts of which Energy Transfer accuses GPI, as explained above.²⁰ However, for seven years now, GPI has been forced to defend itself against manifestly unfounded, unnecessarily complex and protracted litigation by Energy Transfer, which has caused and continues to cause it great harm.
58. Moreover, with its choice to bring the State Lawsuit before this particular forum, Energy Transfer took advantage of a number of problems that have allowed it to drag out the unsubstantiated State Lawsuit for many years now.
59. First, unlike more than 30 other states in the United States, the state of North Dakota does not have anti-SLAPP legislation. This prevents GPI from invoking a powerful form of protection that would have been afforded to it in about 60% of all other jurisdictions in the U.S. North Dakota has therefore been described as "favorable terrain for these types of defamation lawsuits."²¹

²⁰ As an aside, Energy Transfer's accusations against the other defendants are also manifestly unfounded. However, that is not what the present case is about.

²¹ Texas Observer March 25, 2022, "Kelcy Warren's Defamation Suit Has Beto O'Rourke Spoiling For a Fight," <https://www.texasobserver.org/kelcy-warrens-defamation-suit-has-beto-orourke-spoiling-for-a-fight/>. By the way, this is an article that deals with a SLAPP lawsuit filed by Kelcy Warren against well-known (in America) politician Beto O'Rourke. The Texas judge rejected Warren's claims, ruling that O'Rourke's statements qualified

60. A second major problem is the North Dakota judiciary's difficulty in finding a judge to preside over the case. All ten judges in the district where the State Lawsuit was filed (the South Central Judicial District) recused themselves from hearing the case, for reasons unknowable to GPI. The North Dakota Supreme Court then reassigned the case to a judge from another North Dakota district, but this judge retired in April 2022. When reassigning the case, once again all judges in the South Central Judicial District recused themselves from hearing the case. The North Dakota Supreme Court then appointed Judge James Gion from another district (the South Western Judicial District) to hear the case. He took up the case beginning in August 2022.
61. Third, Energy Transfer filed the State Lawsuit in Morton County District Court. Morton County is a small area with only about 30,000 residents. The District Court there is a small court with limited resources to handle the case. The workload for judges in North Dakota counties is extraordinarily high. As an illustration, North Dakota's Chief Justice (Chief Justice) recently explained in his State of the Judiciary Address that "[o]ur district courts handle approximately 160,000 new filings and 20,000 reopened cases each year-180,000 cases. That is an incredible caseload for 55 district court judges and 53 clerks of court offices."²²
62. This touches on a fourth issue. The case will be heard by a jury that will consist only of Morton County residents. The construction of DAPL and the protests against it had a great impact on Morton County residents, and feelings among them about the events still run high. GPI therefore requested that the Court move the trial to a county where potential jurors were not personally affected by the protests against DAPL and the harsh response to them. However, the Court denied this request until further notice.
63. On top of these structural problems, Energy Transfer has managed to greatly draw out the case before trial by raising numerous obviously unfounded counts, to which GPI was forced to respond (see also below). The time-consuming and costly process of discovery took years, with Energy Transfer digging its heels in time and again. It even litigated all the way to the North Dakota Supreme Court in a failed attempt to get out from under disclosure of documents about its pipeline safety record, and to avoid having Kelcy Warren provide a deposition. There are more than 3,000 entries on the Court's docket, and the case has been described as the largest civil case to ever take place in North Dakota. There have been 110 depositions, and millions of pages of information exchanged in the "discovery" phase. GPI's costs have skyrocketed, and continue to increase every day.
64. After the State Lawsuit was filed, the defendant Greenpeace entities again filed a motion to dismiss to end the case early. Judge Marquart (a different judge than the judge currently assigned to the case) denied this request in a short Order. The decision reflects a general, weighty preference in the U.S. to construe cases in favor of the plaintiff when reviewing a motion to dismiss.
65. Following the latest version of Energy Transfer's claims in the Second Amended Complaint, GPI filed a so-called Motion for Summary Judgment on All Counts on April 8, 2024, after discovery was completed. Such a motion, briefly put, is a request for the court to decide the case without trial because the relevant facts are sufficiently undisputed between the parties, and application of the law to them can only lead to one result. This motion is submitted as

as "non-actionable opinions." See: Court of Appeals Texas, Austin June 9, 2023, No. 03-22-00416-CV (Warren v. Rourke), affirmed by the Supreme Court of Texas.

²² This speech was delivered by North Dakota Chief Justice Jon Jensen on Jan. 7, 2025 and can be read back here: <https://www.ndcourts.gov/news/north-dakota/supreme-court/state-of-the-judiciary/2025-state-of-the-judiciary-address>.

Exhibit 15.²³ In it, GPI asks the Morton County District Court to dismiss all of Energy Transfer's claims against it, as there is no basis for these claims. In the motion, GPI notes that the following facts have been established in the proceedings and are not in dispute:

- a. GPI, GP Inc. and Greenpeace Fund, Inc. are separate entities. Thus, a separate allegation would have to be made against GPI;
 - b. GPI was not involved in on-the-ground activities during the protests against DAPL in North Dakota;
 - c. GPI's only activity in the context of the protests against DAPL was co-signing BankTrack's open letter;
 - d. Energy Transfer, despite the years-long discovery process, has been unable to produce any evidence of a causal link between the (alleged) damages it suffered and any actions of GPI.
66. GPI's motion then specifically elaborates, with respect to each alleged tort (trespass, conversion, nuisance and so on), how even the basic requirements for Energy Transfer to allege and prove these counts have not been met (Exhibit 15, pp. 8-19). GPI also shows that the high threshold applicable to the award of "exemplary damages" claimed by Energy Transfer has not been met, which requires "clear and convincing evidence of oppression, fraud or actual malice" - however, there is no scintilla of evidence of such acts by GPI (p. 19-21). GPI therefore seeks dismissal of all claims against it by summary judgment.
67. The Court has yet to decide this motion ten months after it was filed, and it is not clear to GPI whether it will do so at all (in any case, there is no known date for it). Meanwhile, despite the complete lack of a basis for its case against GPI, Energy Transfer is pressing ahead with the State Lawsuit against GPI. The jury trial in the State Lawsuit is expected to begin on or about Feb. 24, 2025, leading to further harm to GPI.

3.4 Statements by Energy Transfer on GPI and the Lawsuits

68. A GP Inc. publication about the case aptly described Energy Transfer's rationale for pursuing the State Lawsuit, even after the Federal Lawsuit fell at the first hurdle, as follows:²⁴
- "When it comes to SLAPP suits like this one, the process itself is the punishment. The burden of time and money to defend constitutionally protected activities from such mischaracterizations is far too high for ordinary citizens and community organizations. As a result, many will decide to keep quiet rather than risk a ruinous judgment."
69. Energy Transfer's public statements confirm that its goal with the lawsuits against GPI and the other defendants is to silence them, as will be explained below. In addition to bringing the Federal Lawsuit and the State Lawsuit against GPI, Energy Transfer has carried on a broad media strategy. It regularly communicates about the case and its previous statements in this regard are still available and findable online for everyone.
70. Concurrently with the filing of the Federal Lawsuit, Energy Transfer published an article about GPI and the other defendants entitled "Energy Transfer Files Federal Lawsuit Against Greenpeace International, Greenpeace Inc., Greenpeace Fund, Inc., BankTrack And Earth

²³ Some parts of this submission have been redacted due to peculiarities of U.S. procedural law. This does not diminish the significance of the remaining portions of the piece.

²⁴ Greenpeace Inc. June 6, 2024, "The Story of Energy Transfer's \$300 Million Lawsuit, and Why It Matters," <https://www.greenpeace.org/usa/energy-transfer-lawsuit-story/>.

First! For Violation Of Federal And State Racketeering Statutes". This article is submitted as **Exhibit 16**.

The article is still available online worldwide and findable using search engines like Google via the URL:

<https://ir.energytransfer.com/news-releases/news-release-details/energy-transfer-files-federal-lawsuit-against-greenpeace/>

71. In this article, Energy Transfer calls GPI a "rogue environmental group", allegedly part of an "Enterprise [which] incited, funded, and facilitated crimes and acts of terrorism." Among other things, Energy Transfer accuses GPI of "employ[ing] a pattern of criminal activity and a campaign of misinformation for purposes of increasing donations and advancing their political or business agendas." It also alleges that GPI and the other defendants were responsible for a "misinformation campaign" that allegedly used "manufactured evidence." In other words: it alleges GPI does not shrink from deliberately misleading the general public with fake evidence.
72. According to Energy Transfer, it is supposedly the case that GPI "directly and indirectly funded eco-terrorists on the ground in North Dakota" in order to "further the Enterprise's corrupt agenda by inducing and directing violent and destructive attacks against law enforcement as well as Plaintiffs' property and personnel." GPI also allegedly engaged in "persistent attempted cyber-attacks and telephonic and electronic threats to the physical safety of executives."
73. Thus, Energy Transfer abused the Federal Lawsuit as an opportunity to publish the same serious and unsubstantiated allegations of criminal, dishonest and wrongful conduct. These allegations strike at the heart of GPI's integrity and reputation. As stated above, GPI merely put its signature, along with more than 500 other organizations, on an open letter by BankTrack. As explained, the Federal Lawsuit, in which these unsubstantiated allegations packaged as a federal RICO claim were submitted to court, was thrown out early on after a motion to dismiss.
74. When filing the Federal Lawsuit, Energy Transfer, through its current Executive Chairman and then-CEO Kelcy Warren, provided an insight into its rationale for bringing lawsuits against Greenpeace entities. Warren is the founder and former CEO of Energy Transfer, LP, and as such is Energy Transfer's most prominent voice in public debate. He is among the 500 richest people in the world, with an estimated personal fortune of between \$6 billion and \$7 billion.²⁵
75. On August 25, 2017, Kelcy Warren appeared on the television channel CNBC (at the time as CEO of Energy Transfer) for an interview about the Federal Lawsuit. Although there were other defendants in the Federal Lawsuit, the title of the interview read "ENERGY TRANSFER SUES GREENPEACE."
76. During the interview, Warren referred to Greenpeace and other public watchdogs as "these people" and said of them, "I am not afraid of these people at all." A transcript of this interview is submitted as **Exhibit 17**. Warren further made it clear that Energy Transfer's goal in bringing lawsuits against the defendant Greenpeace entities is to make them "pay" for their work:

²⁵ By early June 2024, Bloomberg saw Warren as the 399th richest person in the world; Forbes marked him as the 486th richest person in the world.

"Everybody's afraid of these environmental groups and the fear that it may look wrong if you fight back (...) but what they did to us is wrong, and they're going to pay for it [...] They're going to pay for this, they're going to pay for this."

77. Warren explicitly says "this can't be allowed to happen", and states "[t]hey're doing this elsewhere in the country, same cast of characters, and somebody's gotta stand up and we - we chose to do that." In doing so, in GPI's view, he is clearly signaling that he wants the lawsuit to set an example for all "environmental groups" and others participating in the public debate.

78. A month later (September 2017), Warren appeared for an interview with Chris Berg at Valley News Live. In this interview, Warren was even clearer about Energy Transfer's intentions. He said Energy Transfer filed the Federal Lawsuit '[to] send a message,' and not primarily to recover damages:²⁶

"We've created this kind of tolerance where, oh my gosh, you can't challenge these people in fear that someone is going to say you're not a friend of the environment. That's nonsense. [...] Could we get some monetary damages out of this thing, and probably we will? 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."

79. So the message is, "You can't do this," and the intention of Energy Transfer is to end all activities of organizations like GPI. Warren confirms this later in this interview, when Berg asks Warren, "are you trying to cease funding for organizations like Greenpeace?" Warren replies, "Absolutely."

80. He further affirms that the additional purpose of the Lawsuits is to make GPI (and the other Greenpeace organizations) pay in "non-monetary" ways for their participation in the public debate: "whether that paying is - is more monetary or whether that paying is uh, 'you gotta cease this stuff, people, you can't keep conducting yourself this way'."

81. A transcript of this interview is submitted as **Exhibit 18**.

82. Thus, Energy Transfer continually makes negative statements about GPI (and the other Greenpeace entities) and continues to stand by its public statements about GPI. It has several websites on which it posts statements about GPI, including the "Energy Transfer Facts" website and the "DAPL Pipeline Facts" website. On September 9, 2024, on the first mentioned website, Energy Transfer again accused GPI of "illegal actions" and "breaking the law" and indicated that it stands behind its previously made allegations against GPI (**Exhibit 19**).

83. Energy Transfer has even set up two special websites dedicated to the litigation against Greenpeace. The first website is titled "GREENPEACE LAWSUIT: THE FACTS ABOUT ENERGY TRANSFER PARTNERS VS. GREENPEACE," and is permanently available and findable at the url <https://greenpeaceetplawsuit.com/>. Screenshots of this website are submitted as **Exhibit 20**. This website contains, among other things, the unsubstantiated allegations against GPI and others, which were discussed above, and which are presented in this context as "FACTS." The second website, launched very recently, is entitled "TAKE BACK THE TRUTH." Screenshots of this website are submitted as **Exhibit 21**. The alleged "truth" presented here includes unsubstantiated claims such as, "Fact: Greenpeace organized, funded and supported illegal

²⁶ The broadcast can still be viewed online: Valley News Live Sept. 1, 2017, "Energy Transfer Partners CEO, Kelcy Warren, says DAPL was about a money raise", <https://www.valleynewslive.com/content/misc/Energy-Transfer-Partners-CEO-Kelcy-Warren-says-DAPL-was-about-a-money-raise-442409553.html>.

acts of trespass, property damage and violence" and "Fact: Greenpeace targeted Energy Transfer's business constituents with misinformation."

84. Energy Transfer also continues to communicate about the Lawsuits on social media. In September 2024, Energy Transfer published a tweet with a link to an article about the pending lawsuit, highlighting the risk that Greenpeace US could go bankrupt as a result of Energy Transfer's lawsuits. Energy Transfer calls this a "wonderful story" (**Exhibit 22**, p. 1). In another tweet, Energy Transfer links to an article characterizing Greenpeace as "spoiled brats" and in yet another tweet, Energy Transfer links to an article about the Lawsuits titled "A lawsuit may end the heyday of destructive environmental activism" (**Exhibit 22**, p. 2-3). The account Dakota Access Pipeline (@DAPLFacts) posts a tweet on 7 February 2025 with the text: "Many fervent activists are losing touch with the fact that free speech is not a license for violence, harassment and vandalism. #EnergyTransfer vs. #Greenpeace." (**Exhibit 22**, p. 4).

3.5 Procedural history

85. On July 23, 2024, GPI's counsel sent a letter to each of the Defendants holding the Defendants liable on behalf of GPI for the damages GPI has suffered and continues to suffer as a result of their tortious conduct, consisting of the commencement of SLAPPs and acts in connection therewith, including making false statements about GPI, as discussed in Section 3.4. These letters are submitted as **Exhibit 23**. GPI summoned the Defendants to withdraw the State lawsuit and accept liability.
86. On September 6, 2024, Defendants jointly responded to this letter through their counsel Trey Cox of the U.S. law firm Gibson Dunn & Crutcher (**Exhibit 24**). In this letter, Energy Transfer disputes that its conduct, including bringing the State Lawsuit and the Federal Lawsuit, qualifies as a SLAPP. Energy Transfer argues that it was justified in bringing the Lawsuits against GPI, as GPI was allegedly guilty of "illegal actions" and "breaking the law." However, it fails (again) to specify exactly what these supposed illegal actions consisted of.
87. Finally, Energy Transfer argues that "no existing Dutch or European laws referred to in the Letter can result in any form of liability of Energy Transfer, a U.S.-based company." As will be further explained in this summons, this position is incorrect, both generally and in this particular case.
88. On November 19, 2024, GPI, through its counsel, responded to Energy Transfer's letter (**Exhibit 25**), pointing out that under, among others, the anti-SLAPP Directive (to be discussed below) and Dutch law, there is ample basis for legal action in the Netherlands against Energy Transfer. In a brief response on December 4, 2024, Energy Transfer stated that after "careful consideration" of the legislation cited by GPI, it stands by its previously adopted position and will not comply with GPI's demands (**Exhibit 26**).
89. GPI therefore feels compelled to take this matter to the District Court.

4 LEGAL FRAMEWORK

90. Pursuant to Article 6:162 (1) and (2) of the Civil Code, Dutch civil law prohibits tortious conduct (*onrechtmatig handelen*), which is understood to mean an infringement of a right and an act or omission in violation of a duty imposed by law or of what according to unwritten law has to be regarded as proper social conduct.²⁷

²⁷ In section 6.3 of this summons, GPI will further explain that Dutch law applies to this case.

91. The relevant legal duties in this context include various fundamental law standards, as GPI will explain below (par. 4.1). The applicable standard of care in this case is further fleshed out by soft law on SLAPPs (para. 4.2). Furthermore, European Union law standards, including at least the EU Directive aimed at providing protection against SLAPPs, both within and outside the EU, provide both an independent basis for adjudication of the claims and a further interpretation of the standard of care (par. 4.3).
92. In addition, Dutch civil law prohibits parties from abusing their rights, including (but not limited to) exercising a right with no other purpose than to damage another person or when, taking into account the disproportion between the interest in exercising a right and the interest that is harmed as a result, one could not reasonably have decided to exercise that right (Article 3:13(2) of the Civil Code).

4.1 Constitutional standards

93. Under Article 10 of the European Convention on Human Rights ("**ECHR**"), among others, GPI is entitled to the right to freedom of expression. According to the wording of Article 10(1) ECHR, this right includes the right to impart information and the right of the public to receive information. Moreover, according to established case law of the ECtHR, it follows from Article 10 ECHR that the State has a positive obligation to ensure these rights for its residents.²⁸ Under Article 8 ECHR, among others, GPI further has the right to protection of its reputation.²⁹ Article 8 ECHR imposes positive obligations on the State to ensure the rights protected under this article, including in horizontal relations.³⁰
94. These rights also follow from other norms of international law, such as Articles 17 and 19 of the International Covenant on Civil and Political Rights ("**ICCPR**") and, in the context of European Union law, Articles 7 and 11 of the Charter of Fundamental Rights of the European Union (the "**Charter**").
95. In the context of SLAPPs, it is also important to note that, as follows from various international standards, including Article 6 ECHR, parties are in principle entitled to access to a court. At the same time, under Article 17 ECHR, parties cannot derive any rights from the ECHR (and therefore cannot invoke it) if their conduct is aimed at "destroying any of the rights and freedoms set forth in the Convention; therefore, no person may be able to take advantage of the provisions of the Convention to perform acts aimed at destroying the aforesaid rights and freedoms."³¹

²⁸ See, for example, recently, ECHR 17 December 2024, Nos. 32678/18, 17172/20 and 30564/21 (*Side by Side International Film Festival et al. v. Russia*), para. 13: "The Court reiterates the key importance of freedom of expression as one of the preconditions for a functioning democracy. Genuine, "effective" exercise of this freedom does not depend merely on the State's duty not to interfere, but may require positive measures of protection."

²⁹ ECHR 16 February 2016, no. 8895/10 (*Ärztzekammer Für Wien and Dörner v. Austria*), para. 62.

³⁰ ECHR 1 March 2022, no. 35582/15 (*I.V.T. v. Romania*), para. 45: "The Court reiterates that while the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference. In addition to this negative undertaking, there may be positive obligations inherent in effective respect for private and family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of relations of individuals between themselves."

³¹ ECHR 27 June 2023, No. 47833/20 (*Lenis v. Greece*), para. 38 and references therein.

4.2 International 'soft law' sources

96. With respect to SLAPPs, there are several international soft law sources which have significant relevance when interpreting the directly binding legal standards applicable in this case. GPI will outline these below.

97. There have long been concerns internationally about the misuse of the right of access to justice to silence critical voices, thus limiting public debate on important issues. For example, in 2012, before the use of the term "SLAPPs" became commonplace in Europe, the Committee of Ministers of the Council of Europe expressed concerns about the (unjustified) use of litigation as a form of intimidation or as a means to stifle legitimate criticism on issues of public interest. In particular, the Committee of Ministers points to the phenomenon of 'libel tourism,' which it describes as

"[a] form of forum shopping when a complainant files a complaint with the court thought most likely to provide a favorable judgment (including in default cases) and where it is easy to sue. In some cases a jurisdiction is chosen by a complainant because the legal fees of the applicant are contingent on the outcome ("no win, no fee") and/or because the mere cost of the procedure could have a dissuasive effect on the defendant. The risk of forum shopping in cases of defamation has been exacerbated as a consequence of increased globalization and the persistent accessibility of content and archives on the Internet (...)

In some cases libel tourism may be seen as the attempt to intimidate and silence critical or investigative media purely on the basis of the financial strength of the complainant ("inequality of arms"). In other cases the very existence of small media providers has been affected by the deliberate use of disproportionate damages by claimants through libel tourism."

98. The Committee of Ministers emphasizes that this "libel tourism" - which may be an element of a SLAPP - is a violation of the right to freedom of expression, including the right to impart information and the public's right to receive information. The Committee of Ministers also points to established ECtHR case law, from which it follows that the award of disproportionate damages in expression cases is a violation of the rights protected by Article 10 ECHR.

This established line in ECtHR case law was reaffirmed, for example, in the *Independent Newspapers* judgment in 2017. Here, the ECtHR ruled that a EUR 1.25 million award of damages against an Irish newspaper by an Irish jury was disproportionate, and in violation of Article 10 ECHR, among other things holding:³²

"As the Court has indicated previously, it is not necessary to rule on whether the impugned damages' award had, as a matter of fact, a chilling effect on the press. As a matter of principle, unpredictably large damages' awards in libel cases are considered capable of having such an effect and therefore require the most careful scrutiny. (...)

Where, as in this case, there is a shortcoming in the operation of the safeguard at first instance, a defendant may have little option but to bring an appeal against the level of damages awarded, since only through appellate scrutiny can it be assured that the amount bears a reasonable relationship of proportionality to the harm suffered by the plaintiff. The Court notes that this may entail both considerable

³² ECHR 15 June 2017, No. 28199/15 (*Independent Newspapers v. Ireland*), at grounds 85, 102 and 104.

costs and inevitable delay before the decision is given, a fact emphasized by other defamation cases both concluded and pending (...)

unpredictably high damages in libel cases are considered capable of having a chilling effect and they therefore require the most careful scrutiny and very strong justification."

99. Incidentally, in this case, the national court's holding that the publication at issue was defamatory was not at issue: it was purely about the amount of damages awarded. To that extent, this judgment is not a clear example of a SLAPP case. However, it does clearly show that (a claim for) remarkably high damages will almost always violate Article 10 ECHR.
100. A clear example of what would nowadays be qualified as a SLAPP is the *Steel & Morris* case before the ECtHR, in which two private individuals in the United Kingdom had had to pay high damages after a suit brought by McDonalds and others, for distributing critical leaflets. The ECtHR found the award of these high damages to be disproportionate and in violation of Article 10 ECHR, among other things because McDonalds, as a powerful company, had not been able to prove that it had actually suffered any harm from distributing a limited number of pamphlets.³³
101. On October 16, 2017, in Malta, investigative journalist Daphne Caruana Galizia was murdered with a car bomb. At that time, as a result of her thorough reporting in the public interest on corruption, among other issues, there were about 50 lawsuits pending against her, both inside and outside Malta, including at least one case in the United States (Arizona), where she was facing a claim for as much as USD 40 million in damages.³⁴ These events caused a worldwide stir and underscored that SLAPPs are a major problem in the EU as well. In the following years, more and more attention was given to SLAPPs against EU-based parties exercising their right to freedom of expression.
102. The then-Council of Europe Commissioner for Human Rights, Dunja Mijatović, published a "Comment" in October 2020 entitled "Time to take action against SLAPPs" (**Exhibit 27**). Based on various studies, the Commissioner noted that the problem of SLAPPs was worsening in Europe and that "journalists, activists and advocacy groups" are especially targeted by such lawsuits. She pointed to several other examples in addition to the Daphne Caruana Galizia case, and stressed that these were just a few examples of SLAPPs at the time.
103. Underlining that the problem affects all public watchdogs, the Commissioner said, "Public watchdogs in general are affected. Activists, NGOs, academics, human rights defenders, indeed all those who speak out in the public interest and hold the powerful to account might be targeted."
104. Based on established case law of the ECtHR, NGOs such as GPI (like the media) qualify as public watchdogs entitled to a high level of protection of their rights under Article 10 ECHR.³⁵

³³ ECHR 15 February 2005, no. 68416/01 (*Steel & Morris v. United Kingdom*), para. 85-98.

³⁴ P. Milewska June 15, 2023, "SLAPPs, Daphne's Law, and the Future of Journalism," *Verfassungsblog*, See also: Daphne Caruana Galizia Foundation, 'Defense against frivolous and vexatious libel suits', <https://www.daphne.foundation/en/justice/vexatious-libel-cases> ("In May 2017, Ali Sadr Hasheminejad, owner and chairman of Pilatus Bank, sued Daphne in an Arizona court in his and Pilatus Bank's name. The claim was for US\$40,000,000 in damages.")

³⁵ As established, inter alia, in this leading judgment: ECHR 22 April 2012, no. 48876/08 (*Animal Defenders International v. United Kingdom*), para. 103. See also Commission Recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation'), 27 April 2022, SWD(2022) 117 final, para. 7:

This is particularly true when they call attention to issues of public interest. The ECtHR has recognized NGOs as parties making an "important contribution to the discussion of public affairs," and, according to the ECtHR, the proper functioning of civil society therefore has "significant impact on the proper functioning of a democratic society."³⁶ Thus, in cases revolving around the freedom of expression of NGOs, the State's discretion is limited, and the ECtHR will "scrupulously" assess each interference for necessity and proportionality, as well as critically evaluating the application of any positive obligations of the State.³⁷

105. The Commissioner described some common characteristics of SLAPPs:

"SLAPPs are typically disguised as civil or criminal claims such as defamation or libel and have several common features.

First, they are purely vexatious in nature. The aim is not to win the case but to divert time and energy, as a tactic to stifle legitimate criticism. Litigants are usually more interested in the litigation process itself than the outcome of the case. The aim of distracting or intimidating is often achieved by rendering the legal proceedings expensive and time-consuming. Demands for damages are often exaggerated.

Another common quality of a SLAPP is the power imbalance between the plaintiff and the defendant. Private companies or powerful people usually target individuals, alongside the organizations they belong to or work for, as an attempt to intimidate and silence critical voices, based purely on the financial strength of the complainant.

It should be no surprise that SLAPPs are multiplying in areas such as environmental and consumer protection, crime prevention or corruption allegations. A typical example is when a large company sues journalists or activists who have exposed an environmental disaster." (emphasis added)

106. The Commissioner called for the design of a "comprehensive response" against SLAPPs, stressing the great importance of countering SLAPPs, not only to protect the space for public debate, but for the preservation of a democratic society as a whole:

"While this practice primarily affects the right to freedom of expression, it also has a dramatic impact on public interest activities more broadly: it discourages the exercise of other fundamental freedoms such as the right to freedom of assembly and association and undermines the work of human rights defenders."

107. This Comment was echoed in the development of laws and regulations against SLAPPs, as will be explained below. The Comment also played an important role in the ECtHR's first judgment that mentions SLAPPs, the *OOO Memo v. Russia judgment*. To the extent relevant, the ECtHR sees the Comment as evidence of "the growing awareness of the risks that court

"Human rights defenders also play an important role in European democracies, especially in upholding fundamental rights, democratic values, social inclusion, environmental protection and the rule of law. They should be able to participate actively in public life and make their voices heard on policy matters and in decisionmaking processes without fear of intimidation. Human rights defenders refer to individuals or organizations engaged in defending fundamental rights and a variety of other rights, including environmental and climate rights, women's rights, LGBTIQ rights, the rights of the people with a minority racial or ethnic background, labor rights or religious freedoms."

³⁶ ECHR 8 November 2016, no. 18030/11 (*Magyar Helsinki Bizottság v. Hungary*), para. 166-167.

³⁷ *Animal Defenders International*, r.o. 102 and 103.

proceedings instituted with a view to limiting public participation bring for democracy, as highlighted by the Council of Europe Commissioner for Human Rights."³⁸

108. This threat has been recognized worldwide. In 2021, the then-UN Special Rapporteur on freedom of peaceful assembly and of association, Annalisa Ciampi, published a note on SLAPPs in which she identifies "a significant increase worldwide" of SLAPPs (**Exhibit 28**). She summarizes common characteristics of a SLAPP as follows:

"[The term SLAPP] generally refers to a civil lawsuit filed by a corporation against non-government individuals or organizations (NGOs) on a substantive issue of some political interest or social significance. SLAPPs aim to shut down critical speech by intimidating critics into silence and draining their resources. In the process, they distract and deflect discussions on corporate social responsibility, and - by masquerading as ordinary civil lawsuits - convert matters of public interest into technical private law disputes.

Often based upon ambiguous and elastic provisions of law, SLAPPs use a range of tactics to exhaust resources, campaign capacity and morale:

- They resort to motions, injunctions and other procedurally onerous processes (particularly the expensive and resource-intensive discovery/disclosure process) to impose heavy burdens on activists and civil society organizations
- They often target individual campaigners, as well as the organizations they work for, to maximize the SLAPP's capacity to intimidate.

They generally include exorbitant claims for damages and allegations designed to smear, harass and overwhelm the campaigners

SLAPPs threaten advocacy activities and therefore undermine the ability of civil society actors to effectively exercise their rights to freedom of expression, of assembly and of association."

109. This description is consistent with previous authoritative descriptions of what a SLAPP may be.³⁹ Thus, there was some consensus as early as 2021 on the elements from which it follows that a lawsuit (or lawsuits) are SLAPP(s). In the same note, the Special Rapporteur expressed concern about developments surrounding SLAPPs in the United States:

"The SLAPP trend has been particularly pronounced in the US, fueled and aided by exorbitant legal fees, the "American rule" of costs apportionment (whereby each party to a lawsuit is responsible for its own attorney fees), and an absence of caps on damages. In a recent report, the free speech group Index on Censorship identified civil litigation as one of a number of growing threats to US press freedom. (...) A worrying new approach has been the use of the Racketeering Influenced and Corrupt Organizations Act (RICO) to intimidate advocacy groups and activists by enabling corporations to smear these groups as 'criminal enterprises,' while

³⁸ ECHR 15 March 2022, no. 2840/10 (*OOO Memo v. Russia*), para. 23.

³⁹ And also at other UN documents and resolutions, including UN Human Rights Council, Resolution on the safety of journalists, Oct. 6, 2022, A/HRC/RES/51/9, <https://digitallibrary.un.org/record/3992428>, with a call for UN Member States to take action against SLAPPs given the seriousness of "the rise of strategic lawsuits against public participation, including by business entities, to pressure, intimidate or exhaust the resources and morale of journalists, and thereby stop them from performing their work, including on matters of public interest" (this protection, as noted above, also attaches to other 'public watchdogs').

claiming exorbitant damages (RICO entitles plaintiffs to claim treble damages as a punitive measure) for the 'harm' they claim to have suffered."

110. The Special Rapporteur pointed out that the increase in SLAPPs is all the more unacceptable now that companies are subject to international law obligations, both direct and indirect (e.g., the UN Guiding Principles) to respect human rights. Given the primacy of international law, the Special Rapporteur noted that by filing SLAPPs, companies act unlawfully in any event, regardless of the legality under domestic/national law:

"It is a well established principle of international law that the characterization of an act as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law. The obligations of corporations under international law, therefore, prevail over all national laws and regulations, including those protecting human rights."

111. Following the murder of Daphne Caruana Galizia, there were many voices in the European Union calling for binding EU legislation to provide journalists, activists, NGOs and other public watchdogs with better protection against SLAPPs. In response to this, numerous parties united in the broad "Coalition Against SLAPPs in Europe" ("**CASE**"). Inspired in part by Daphne Caruana Galizia's sons - who are burdened with SLAPPs that have continued despite her death - CASE labored to establish legal safeguards against SLAPPs in the EU. These efforts resulted, in part, in the creation of the laws and regulations to be discussed below.
112. The European Parliament ("EP") adopted a resolution on SLAPPs in 2021, in which the EP refers to a long list of studies and position papers on SLAPPs and noted that (i) SLAPPs have "a direct and detrimental impact on democratic participation, societal resilience and dialogue" and (ii) SLAPPs are in direct conflict with the core values of the EU as enshrined in Article 2 TEU (**Exhibit 29**).⁴⁰
113. The EP therefore expressed its concerns about SLAPPs and called on the Commission to develop "hard" and "soft" legislation to protect victims of SLAPPs (including "NGOs, civil society and other actors engaging in public participation, such as those working on human rights and environmental issues," under M). The EP also mentioned that "SLAPPs and SLAPP threats may also be brought against watchdogs within the Union by actors in third countries and before courts in third countries" (Exhibit 29, under N). Without EU legislation, SLAPPs would, according to the EP, "continue to threaten democracy, the rule of law and the fundamental rights of freedom of expression, association and peaceful assembly and information in the Union" (para. 22). The EP called for a broad definition of 'SLAPP' because "if measures only address defamation lawsuits, actions on other civil matters or criminal proceedings may still be used at the initiative of claimants based in or outside the Union" (para. 22).
114. In April 2022, the European Commission (the "**Commission**") took up the EP's call by publishing a Recommendation and the first draft of the anti-SLAPP directive, to be discussed below.⁴¹

⁴⁰ These values as enshrined in Article 2 TEU are: "the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

⁴¹ European Commission April 27, 2022, Recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"), SWD(2022) 117 final.

4.3 Anti-SLAPP Directive and Recommendation Committee of Ministers

115. In April 2022, the Commission published the first proposal for an anti-SLAPP Directive. This Directive is also called "Daphne's Law," in memory of Daphne Caruana Galizia whose case helped lead to the creation of this legislation. After going through the usual legislative process, Directive 2024/1069 on the protection of targets of SLAPP (hereinafter also "the **Directive**") was finally adopted on April 11, 2024 and entered into force on May 6, 2024.⁴² The transposition deadline is set at two years after entry into force, i.e. May 7, 2026 (Article 22(1) Directive).⁴³ The authentic English language version of the Directive is submitted as **Exhibit 30**.

116. The Directive helps give effect to the right to freedom of expression and freedom of information protected by Article 11 Charter and Article 10 ECHR (Recital 4 of the Directive). This right includes the freedom to hold opinions and to impart information to the public, without interference from public authorities and "regardless of frontiers". It follows from the recitals of the Directive that its purpose is to ensure that journalists and human rights defenders within the EU and its Member States can actively participate in public life and debate, and hold parties to account without fear of intimidation (recital 11 Directive). Human rights defenders are defined in the Directive as follows (Recital 11 Directive):

"Human rights defenders include individuals, groups and organisations in civil society that promote and protect universally recognized human rights and fundamental freedoms. Human rights defenders are committed to promoting and safeguarding civil, political, economic, social, cultural, environmental, climate, women's and LGBTIQ rights and to fighting against direct or indirect discrimination as set out in Article 21 of the Charter. Considering the Union's environmental and climate policies, attention should also be given to environmental rights defenders as they play an important role in European democracies."

117. The recitals echo the threat of SLAPPs to public debate and a democratic society that has been widely signalled, as well as the need for EU legislation to achieve a minimum level of protection against SLAPPs within the Union.

118. The basic premise of the Directive is that the rules it lays down apply to SLAPPs with a 'cross-border' element, although Member States are free to provide more far-reaching protection against them. In this context, the Directive pays particular attention to the threat posed by SLAPPs brought in third countries (i.e. outside the EU) against public watchdogs based in the EU (recital 43 of the Directive, emphasis added):

"In the cross-border context, it is also important to recognize the threat of SLAPPs in third-countries targeting journalists, human rights defenders and other persons engaged in public participation who are domiciled in the Union. SLAPPs in third-countries may involve excessive damages being awarded against persons engaged in public participation. Court proceedings in third-countries are more complex and costly for the targets of SLAPPs. To protect democracy and the right to freedom of expression and information in the Union and to avoid the safeguards provided by this Directive being undermined by recourse to court proceedings in other

⁴² The full title of the Directive is as follows: Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation').

⁴³ For a detailed overview of the legislative train schedule, see the Legislative Train Schedule page on the EP site, available at: <https://www.europarl.europa.eu/legislative-train/package-european-democracy-action-plan/file-initiative-against-abusive-litigation-targeting-journalists-and-rights-defenders>.

jurisdictions, it is important to provide protection against manifestly unfounded claims and abusive court proceedings against public participation in third-countries."

119. The Directive in addition underlines that SLAPPs also have an impact on other rights of their victims than freedom of expression, such as the right to reputation (recital 16) "Court proceedings against public participation may have an adverse impact on the credibility and reputation of natural and legal persons that engage in public participation and may exhaust their financial and other resources." Indeed, as is made explicitly clear in the Directive (recital 46): "It is typical in SLAPPs that those targeted suffer severe financial repercussions and psychological and reputational harm. Causing such harm is one of the aims of SLAPP claimants when they initiate abusive court proceedings against public participation."
120. As will be explained below, in light of these high risks to victims of SLAPPs, the Directive accordingly contains several specific provisions to protect parties based in the EU from SLAPPs.
121. Article 1 of the Directive defines the subject matter of the Directive, namely "[to provide] safeguards against manifestly unfounded claims or abusive court proceedings in civil matters with cross-border implications brought against natural and legal persons on account of their engagement in public participation." Article 2 of the Directive limits the effect of the Directive to civil or commercial cases with "cross-border implications" brought by the initiation of "civil proceedings, including procedures for interim and precautionary measures and counteractions, whatever the nature of the court or tribunal." Article 3(1) Directive states that the Directive is minimum harmonization, and thus Member States are free to provide further protection for victims of SLAPPs.
122. The Directive provides protection against "manifestly unfounded claims or abusive court proceedings" (Article 1 Directive), with "abusive court proceedings" broadly defined under Article 4(3) Directive:

"court proceedings which are not brought to genuinely assert or exercise a right, but have as their main purpose the prevention, restriction or penalization of public participation, frequently exploiting an imbalance of power between the parties, and which pursue unfounded claims. Indications of such a purpose include for example:

 - (a) the disproportionate, excessive or unreasonable nature of the claim or part thereof, including the excessive dispute value;
 - (b) the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;
 - (c) intimidation, harassment or threats on the part of the claimant or the claimant's representatives, before or during the proceedings, as well as similar conduct by the claimant in similar or concurrent cases;
 - (d) the use in bad faith of procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping or the discontinuation of cases at a later stage of the proceedings in bad faith."
123. Importantly, this is not an exhaustive or cumulative set of criteria: these are merely "indicators" of a SLAPP. There are several other indicators and indications in the recitals of the Directive from which it can be inferred that a case is a SLAPP. Here it is important to note that even if a case is partially founded, this does not rule out the possibility that it is a SLAPP (recital 29 Directive):

"Claims made in abusive court proceedings against public participation can be either fully or partially unfounded. This means that a claim does not necessarily have to be completely unfounded for the proceedings to be considered abusive. For example, even a minor violation of personality rights that could give rise to a modest claim for compensation under the applicable law can still be abusive, if a manifestly excessive amount or remedy is claimed."

124. As far as relevant in the present case, the Directive's Chapter 5 provides protection to EU-based parties against SLAPPs in third countries, *i.e.* countries outside the EU. Article 16 of the Directive provides protection against enforcement of judgments rendered in third countries in SLAPP cases: that is not (yet) at issue in this case.

125. Article 17(1) of the Directive provides further protection for parties established in an EU Member State against SLAPPs brought against them in third countries:

"Member States shall ensure that, where abusive court proceedings against public participation have been brought by a claimant domiciled outside the Union in a court or tribunal of a third-country against a natural or legal person domiciled in a Member State, that person may seek, in the courts or tribunals of the place where that person is domiciled, compensation for the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third-country."

126. It therefore follows that in EU Member States it should be possible for a party domiciled in that Member State, against whom a SLAPP in a third country is pending, to bring a claim for damages against the plaintiff in the SLAPP before the courts of that Member State. According to the recitals to the Directive, in this regard, the EU-based victim of a SLAPP in a third country "should apply irrespective of a decision having been rendered or of a decision being final, as targets of SLAPPs can suffer damage and incur costs from the start of court proceedings and possibly even without any decision being rendered, such as in the case of a withdrawal of the claim" (recital 44).

127. Under Article 17(2) Directive, Member States may limit the application of the provisions of Article 17(1) Directive to a certain extent while the SLAPP is still pending in the third country. The Netherlands has indicated that it will not make use of this limitation, as will be further explained below. Article 17(1) of the Directive therefore applies in full to the Netherlands.

128. It further follows from the Directive that there should be broad scope for adjudication of claims in cases where victims of SLAPPs seek legal protection, including an order for publication of the judgment to be rendered in such a case (recital 31 Directive)

"The main objective of giving courts or tribunals the possibility of imposing penalties or other equally effective appropriate measures is to deter potential claimants from initiating abusive court proceedings against public participation. Other appropriate measures, including the payment of compensation for damage or the publication of the court decision, where provided for in national law, should be as effective as penalties."

129. Just before the Directive was finally adopted, on April 11, 2024, the Committee of Ministers of the Council of Europe published a Recommendation on combating SLAPPs on April 5, 2024 (**Exhibit 31**), considering that under Article 10 ECHR, Member States have a positive obligation, among others, to ensure a safe and positive environment for participation in public debate, without fear of reprisal (p. 1).⁴⁴

⁴⁴ In this regard, see also ECHR 14 September 2010, No. 2668/07 and Others (*Dink v. Turkey*), para. 106.

130. The Committee of Ministers further underlines the particular threat posed by SLAPPs with a "cross-border" element, given the additional complexity, cost and stress that such cases typically entail (para. 11). The Committee of Ministers also encourages Member States of the Council of Europe to ensure the protection of Article 17(1) Directive for their residents (para. 14):

"Member States are encouraged to introduce rules to ensure that, where SLAPPs have been brought before judicial or other authorities of a third country against a natural or legal person domiciled in a member State, that person may seek, before judicial or other authorities of the place where they are domiciled, compensation of the damages and the costs incurred in connection with the proceedings before the judicial or other authorities of the third country, irrespective of the domicile of the claimant in the proceedings in the third country."

5 JURISDICTION AND APPLICABLE LAW

5.1 Framework of review regarding jurisdiction

131. Article 7, introductory sentence and paragraph 2 Brussels I bis states:

" A person domiciled in a Member State may be sued in another Member State:

(...) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur."

132. It follows from the jurisprudence of the Court of Justice of the EU that in matters of tort law, it is possible to sue both in the courts of the place where the act causing the harm took place (*Handlungsort*) and the place where the harm occurred (*Erfolgsort*). The plaintiff can choose at which place to sue the defendant(s). The Defendants are all domiciled outside the EU, with which the jurisdiction of the Dutch court follows from Article 6 opening words, and under (e) of the Code of Civil Procedure, which is based on (and according to established case law is interpreted in the same way as) Article 7, opening words and paragraph 2, Brussels Ia.
133. As explained above, Article 17 (2) of the Directive obliges Member States to ensure that the courts in that Member State have jurisdiction to hear cases in which victims of SLAPPs in third countries claim compensation for "the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third-country." This is already possible in the Netherlands, given the provisions of Article. 6 opening words and under (e) of the Code of Civil Procedure.⁴⁵
134. On October 1, 2024, as part of internet consultation, the government published the draft Anti-SLAPP Directive Implementation Act (*Implementatiewet anti-SLAPP Richtlijn*) and the accompanying draft Explanatory Memorandum (these documents are submitted as **Exhibit 32** and **33**).⁴⁶ This is a limited legislative amendment. The government explains this in the draft Explanatory Memorandum (*Memorie van Toelichting*) as follows:

⁴⁵ See for example District Court of The Hague 9 October 2019, ECLI:NL:RBDHA:2019:10254 (*Ard-Choille*), para. 5.41 and 5.42; District Court of Overijssel, location Almelo 20 May 2020, ECLI:NL:RBOVE:2020:1808, para. 2.9; as well as District Court of Amsterdam 9 March 2023, ECLI:NL:RBAMS:2021:950 (*Bellingcat/RIA FAN*), para. 2.1; Court of Appeals of The Hague 6 October 2015, ECLI:NL:GHSHE:2015:3904 (*X/Google*), r.o. 3.3.2. For European case law in this regard, see, for example, ECJ EU 28 January 2015, C-375/13, ECLI:EU:C:2015:37 (*Kolassa*), ECJ EU 12 September 2018, C-304/17, ECLI:EU:C:2018:701 (*Löber v Barclays*).

⁴⁶ See: <https://www.internetconsultatie.nl/antislapp/b1>.

"Except for the measure of providing security for litigation costs and damages included in this Directive, Dutch (procedural) law already provides for the measures prescribed by the Directive. No separate implementation is therefore necessary for this."

135. The government explicitly confirms in the draft Explanatory Memorandum that implementation of the Directive is also not necessary with respect to Article 17(1) of the Directive, considering:

This provision requires Member States to ensure that if a SLAPP has been brought by a plaintiff domiciled or established outside the Union before a court in a third country against a SLAPP target domiciled in a Member State, that SLAPP target may seek compensation from a court of his or her domicile or establishment for damages and costs incurred in connection with the proceedings before the third country court. Dutch law already provides for this possibility.

The Dutch regulation is in line with Article 7 Brussels Ia Regulation. Based on consistent case law, the provision of Article 7 under 2 (place where the harmful event occurred) refers to both the harmful event and the place where the direct damage occurred. In the case of SLAPPs in a third country directed against a person residing in the Netherlands, it may be assumed that the direct harm to this person (also) occurs in the Netherlands. This means that provision has already been made for the implementation of Article 17 of the Directive."

136. As mentioned above, the government further waives the possibility of limiting protection for victims of SLAPPs under Article 17(2) of the Directive, considering:

"The second paragraph of Article 17 of the Directive allows Member States to limit the possibility to seek compensation in the Member State of the SLAPP target while proceedings are pending in a third country. This possibility will not be used because there is no reason to limit the possibilities of potential SLAPP targets in this regard."

137. It follows that the government's aim is the broadest possible protection of "potential SLAPP targets". Thus, regarding protection against third country SLAPPs, there is already a provision in Dutch procedural law, and implementation is not necessary. However, Article 17(1) of the Directive does provide further guidance on the interpretation of the existing criteria for jurisdiction.

5.2 Application of the framework of review to the present case

138. The basis of this case is the Defendants' tortious acts against GPI, or abuse of rights against GPI, in particular by filing SLAPPs against GPI in a third country (the United States) and all acts related thereto, including publishing false statements about GPI that are available and findable worldwide (including in the Netherlands) via the Internet.⁴⁷
139. GPI, which is domiciled in the Netherlands, is suffers damages as a result, on the basis of which it may be assumed that the direct damage for GPI (also or in any case) occurs in the Netherlands. In this regard, see the government's explanation cited above, specifically in the context of SLAPPs: "In the case of SLAPPs in a third country directed against a person residing in the Netherlands, it may be assumed that the direct damage for this person (also) occurs in the Netherlands." Thus, that is true in this case. GPI can therefore claim the damages suffered it suffers due to Energy Transfer's conduct before Dutch courts on the basis of (in any case)

⁴⁷ In this regard, see CJEU Oct. 25, 2011, ECLI:EU:C:2011:685 (*eDate*).

Article 6 opening words and under e of the Code of Civil Procedure, read in conjunction with Article 7 of the Brussels Ia Regulation and Article 17 (1) of the Directive.

140. The damages suffered by GPI can be classified as monetary loss, damages as a result of the intentional hindrance of GPI in achieving its public interest goals, and reputational damage as a result of the SLAPP, including the associated publication of false statements. For a more detailed discussion, GPI refers to par. 7 of this summons: see there.
141. GPI is suffering these damages (also or in any case) in the Netherlands, where the center of its interests is. GPI has been statutorily established in the Netherlands (in Amsterdam) since 1979 and has its offices at Surinameplein in Amsterdam, where a significant part of its staff also works: 131 of its employees work in the Netherlands (228 other employees work in various countries worldwide). GPI's employees working in the Netherlands have employment contracts governed by Dutch law. GPI has Public Benefit Organization (ANBI) status and in this relation publishes the information required by that status annually.⁴⁸ The most recent annual accounts of GPI (2023) are submitted as **Exhibit 34**. GPI further maintains its bank accounts in the Netherlands.
142. As stated above, GPI is the holder of the trademarks of the Greenpeace network. The other entities in the Greenpeace network receive permission from GPI to use these marks through a license agreement governed by Dutch law.
143. GPI is also the charterer of several vessels, such as the famous *Arctic Sunrise* and the *Rainbow Warrior*, which sail under the Dutch flag. GPI employs a total of 89 crew members, all of whom have employment contracts under Dutch law. The crew working on GPI's ships, and residing in the EU, are therefore covered by the Dutch Merchant Shipping Pension Fund Foundation.
144. Based on the foregoing, Dutch courts have jurisdiction in this case. To the extent the Court requires further proof of the proposition that the center of GPI's interests is located in the Netherlands, and/or the proposition that GPI has suffered damages in the Netherlands in the ways described above, GPI hereby expressly offers such proof.
145. The relative jurisdiction of the Amsterdam District Court follows from the provisions of Article 102 of the Code of Civil Procedure.⁴⁹
146. Finally, GPI would like to point out that this case is special in several respects because - to its knowledge - there is no precedent for it. After all, it seeks protection against a SLAPP in a country located outside the EU, involving several new relevant norms (including the Directive and soft law on SLAPPs). These norms require application of national procedural law in line with the goal of achieving far-reaching protection against SLAPPs. The interpretation of domestic procedural law should therefore be in line with the provisions of these standards. See in this regard recital 32 of the Directive, which explicitly explains that the application of "all procedural safeguards" of the Directive may be "not unduly arduous" for victims of SLAPPs. It would therefore be in conflict with the intention of the Directive and the consensus within the EU/Council of Europe that follows from the 'soft law' norms quoted above to raise high formal thresholds in national procedural law for protection against SLAPPs. This is all the more true since the Dutch government itself indicates that no adaptation of Dutch law is necessary for the implementation of the Directive, making the contents of the Directive directly enforceable.

⁴⁸ See: <https://www.greenpeace.org/international/about/annual-report/>.

⁴⁹ See in this regard Amsterdam District Court, March 9, 2021, ECLI:NL:RBAMS:2021:950 (*Bellingcat/OOO Fan*), para. 2.1.

5.3 Applicable law

147. Since GPI's damages are occurring in the Netherlands and consist, among other things, of reputational damage, as explained above, pursuant to Article 10:159 of the Dutch Civil Code, read in conjunction with Article 4(1) of the Rome II Regulation, the Directive and Dutch law apply to this case.⁵⁰

6 TORT AND ABUSE OF RIGHTS BY ENERGY TRANSFER

148. Energy Transfer's conduct towards GPI, which is to be classified as a "SLAPP," including Energy Transfer's commencement of the Federal Lawsuit and the State Lawsuit (together: the "**Lawsuits**") against GPI, and the making of inaccurate statements about GPI, is tortious and qualifies as an abuse of rights under Dutch civil law (Article 6:162 and 3:13 of the Civil Code), read in conjunction with Articles 8 and 10 ECHR, Article 7, 10 and 11 of the Charter and the provisions of the Directive. GPI will explain below what this tortious conduct and abuse of right consists of. It will first deal with the tortious conduct pursuant to Article 6:162 of the Civil Code.
149. Energy Transfer is acting tortiously towards GPI within the meaning of Article 6:162 of the Dutch Civil Code, by acting in breach of its statutory duties and in violation of what is proper social conduct according to unwritten law in society.
150. The legal obligations incumbent on Energy Transfer are further elaborated, *inter alia*, in Articles 8 and 10 ECHR and the Directive, read in conjunction with Articles 7 and 11 of the Charter.⁵¹ Energy Transfer's conduct, as further explained below, is contrary to the legal obligations incumbent upon it arising from these standards, in particular refraining from infringing GPI's freedom of expression and from infringing GPI's reputation.
151. Moreover, as explained, the State has a positive obligation under Articles 8 and 10 ECHR to ensure the rights protected by those provisions. This positive obligation is fleshed out by the provisions of the Directive and the other sources of law discussed above. GPI's strong interest in protection from the Dutch courts against the SLAPPs brought by Energy Transfer also lies herein. After all, Energy Transfer's conduct leads to a great "chilling effect" for GPI, and for that matter also for other organizations that might wish to comment on Energy Transfer or other powerful players in the United States. This degree of impairment of GPI's rights under Articles 8 and 10 ECHR (and of the public under Article 10 ECHR) is unacceptable in the Dutch and European legal sphere.
152. It is further crystal clear from the applicable fundamental law standards, the soft law standards discussed above and the Directive, that initiating a SLAPP and, in connection therewith, making false statements about a party against whom a SLAPP has been initiated violates proper social conduct. For that reason, too, Energy Transfer is acting tortiously against GPI. In any case, GPI emphasizes the clear consensus within the EU and the Council of Europe that SLAPPs, and especially SLAPPs in countries outside the EU or Council of Europe, are a great danger to freedom of expression and thus democracy. The Member States must therefore do their utmost to protect parties within their jurisdiction against

⁵⁰ Indeed, Article 4(1) of the Rome II Regulation states, "Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur." See also Supreme Court, June 3, 2016, ECLI:NL:HR:2016:1054 (*Dahabshill*),

⁵¹ According to established case law, these legal duties also find application in relationships between private parties through the doctrine of the horizontal effect of fundamental rights.

them. GPI is convinced that this also implies that existing laws and regulations should be interpreted in such a way that victims of SLAPPs receive maximum protection and are able to claim this protection in court in the simplest way possible (see also recital 32 of the Directive, cited above).

153. GPI further believes that the applicable standards of Dutch law can be read in direct correlation with the relevant provisions of the Directive, as the Dutch government also explicitly confirms. In any event, to the extent that your Court would rule otherwise, the law applicable in this case as set forth above should be interpreted in conformity with the Directive.
154. Energy Transfer's conduct which, in consideration of the foregoing, can be characterized as tortious against GPI, and against which GPI seeks your Court's protection in the present case, can be characterized as follows:
 - (i) GPI is an Amsterdam-based NGO working in the public interest and in that context exercised its freedom of expression to express legitimate criticism of Energy Transfer. As a result, Energy Transfer has twice drawn it into protracted and complex civil proceedings in the United States (a third country within the meaning of the Directive). This brings the case within the scope of the Directive (Article 1 and 2 Directive) and involves a "cross-border" element, thus also establishing that the handling of this case is more complex and costly for GPI (Recital 43 Directive);
 - (ii) An unusual circumstance in this case is that it is clear from Energy Transfer's own statements that Energy Transfer's purpose in bringing the Lawsuits is to punish the Greenpeace network for its (very limited) involvement in the protests against DAPL. In doing so, Energy Transfer wishes to send a message, not only to the Greenpeace network but to all groups working to advance the public interest, as it has said: the proceedings are meant "to send a message, you can't do this (...) and it's not going to be tolerated in the United States." Limiting the space for, and participation in, public debate in a pluralistic democracy is not a legitimate goal of litigation. Thus, Energy Transfer, insofar as relevant, is also not entitled to (successful) reliance on Article 6 ECHR or a comparable constitutional provision. See in more detail under (v).
 - (iii) It has been explained in detail above that the Lawsuits are manifestly unfounded. GPI points out that for the provisions of the Directive to apply, it is sufficient that a lawsuit qualifies as an abusive court proceeding or is manifestly unfounded (Article 1 Directive). GPI believes that the Lawsuits fall under both categories. Incidentally, the only issue relevant to the consideration of this case is that the claims in the Lawsuits against GPI are unfounded. GPI believes that this is equally true of the claims against the other Defendants, but that is not relevant to the consideration of the present case. In this regard, it is also relevant that Energy Transfer ought to withdraw the State Lawsuit against GPI from the perspective of mitigating damages, but has willfully refused to do so.
 - (iv) There is an obvious "imbalance of power" between GPI and Energy Transfer (Article 4(3) Directive). Energy Transfer is a huge company that generated nearly USD 80 billion in revenue in 2023.⁵² Kelcy Warren is also a prominent donor to President Donald Trump: he gave nearly USD 6 million to Trump's re-election campaign in

⁵² Wall Street Journal Markets, Energy Transfer LP, cf:
<https://www.wsj.com/market-data/quotes/ET/financials/annual/income-statement>.

2024.⁵³ This gives Energy Transfer a degree of financial and political power incomparable to that of GPI.

- (v) Further application of the Directive's indicators of "abusive court proceedings" also suggests that the Lawsuits qualify as SLAPPs. For example, both cases involve disproportionate, excessive and unreasonable demands (Article 4(3)(a) Directive). The chosen bases are manifestly unfounded, and incompatible with the First Amendment of the U.S. Constitution, and the hundreds of millions of dollars in damage claims are clearly excessive. The Directive explicitly mentions "the excessive dispute value" as a key indicator of a SLAPP, in line with the settled case law of the ECtHR and the authoritative comments of Commissioner Dunja Mijatović ("demands for damages are often exaggerated") and Special Rapporteur Annalisa Ciampi ("they generally include exorbitant claims for damages"). See also recital 43 of the Directive: "SLAPPs in third- countries may involve excessive damages being awarded against persons engaged in public participation."
- (vi) A further indication that the Lawsuits qualify as SLAPPs is that Energy Transfer chose to almost immediately file the State Lawsuit against GPI even after the federal law-based claims in the Federal Lawsuit were dismissed as manifestly unfounded. Thus, this is an instance of different proceedings on the same subject matter (Article 4(3)(b) Directive) and bad faith use of procedural tactics (Article 4(3)(d) Directive). What is important here - to the extent Energy Transfer would argue that this was its right - is that Energy Transfer presented allegations that were substantially the same in the State Lawsuit as the ones the federal court had given short shrift to when packaged as a RICO claim.
- (vii) Also noteworthy in this context is that Energy Transfer chose, each time, to file the Lawsuits against GPI in North Dakota. GPI co-signed a letter, which is insufficient reason to drag it before two different courts in North Dakota. This is all the more true since there are no anti-SLAPP laws in North Dakota. Thus, this conduct by Energy Transfer towards GPI can be qualified as a form of "abusive forum shopping" (Article 4(3)(d) of the Directive).
- (viii) As a result of the Lawsuits, GPI has been forced to incur high costs including legal fees. The cost element also plays a role in the qualification of cases as SLAPPs; see, for example, recital 43 of the Directive. A factor here is that Energy Transfer (unsuccessfully) raised many procedural hurdles, including to prevent discovery of documents on its side and to shield Kelcy Warren from being heard as a deponent. This led to very significant additional costs for GPI.
- (ix) The Lawsuits involve the public disparaging of GPI without justification (as the Special Rapporteur puts it: publication of "allegations designed to smear, harass and overwhelm the campaigners"), which is also an indicator of an "abusive court case" (Article 4(3)(c) of the Directive). The Recommendation of the Committee of Ministers mentions as a possible characteristic of SLAPP in this context: "the legal action is accompanied by a public relations offensive designed to bully, discredit or intimidate actors participating in public debate or aimed at diverting attention from the substantial issue at stake."
- (x) The public disparaging of GPI results in damage to GPI's reputation: there is a consensus in the EU and Council of Europe that this may be an aim and/or

⁵³ The Guardian October 18, 2024, "Trump gets record donations from big oil but far less than \$1bn he wanted," <https://www.theguardian.com/us-news/2024/oct/18/election-trump-oil-gas-fundraising>.

consequence of SLAPPs. In any event, it is also part of Energy Transfer's tortious conduct towards GPI. As explained in detail above, in the SLAPPs it filed against GPI, and in media statements and online expressions surrounding these SLAPPs, Energy Transfer has for years continuously accused GPI of committing serious criminal offenses and all kinds of serious wrongful acts. These expressions - which continue to this day - are false, as explained above, and obviously harmful to GPI.

- (xi) In the State Lawsuit, Energy Transfer at a later stage dropped significant parts of its claims, including claims that had wrongly been brought against a former GP Inc. employee, allegations relating to the Mariner East and Bayou Bridge pipelines, and allegations concerning allegedly defamatory statements about insufficient consultation with the Standing Rock Sioux Tribe, as well as statements about inadequate environmental review of DAPL. The "discontinuation of cases at a later stage" is also an indicator of a SLAPP (Article 4(3)(d) of the Directive)
 - (xii) Finally, the Recommendation of the Committee of Ministers lists as indicative of conduct qualifying as a SLAPP, "the claimant or their representatives engage in legal intimidation, harassment or threats, or have a history of doing so." In that context, it is worth noting that Kelcy Warren previously filed a lawsuit against the then-Democratic gubernatorial candidate Beto O'Rourke, and litigated it all the way to the Texas Supreme Court. O'Rourke had criticized the fact that Energy Transfer had raised its rates during a winter storm in Texas, making an additional USD 2.4 billion in profits, after which Kelcy Warren donated USD 1 million to Governor Greg Abbott's re-election campaign. O'Rourke deemed this "pretty close to a bribe" for the purpose of preventing the taking of action against Energy Transfer. A Texas appeals court rejected the claims outright, citing freedom of expression and the state's anti-SLAPP statute. The Texas Supreme Court declined to hear the case.⁵⁴
155. All in all, both the Federal Lawsuit and the State Lawsuit are textbook examples of tortious SLAPPs, both individually and when viewed together. If the Lawsuits were not to qualify as SLAPPs, GPI believes that no case will reasonably do so. Therefore, the filing of the Lawsuits, the continuation of the State Lawsuit, and Energy Transfer's continued conduct in the context of the SLAPPs (including continuously making false statements about GPI) is plainly tortious against GPI.
156. Given that Energy Transfer filed the Lawsuits and otherwise behaved as described above, the tortious conduct is attributable to it. As GPI will explain in more detail below (Section 7), it has suffered and continues to suffer significant damages as a result. Those damages are proximately caused by Energy Transfer's tortious conduct: without the filing of the Lawsuits and Energy Transfer's other actions, GPI would not have suffered any damages. The standards relied upon by GPI (including the anti-SLAPP laws and regulations) explicitly seek to protect against the type of damages suffered by GPI. Thus, all the requirements of Article 6:162 of the Dutch Civil Code have been met.
157. Moreover, on the same factual grounds as mentioned above, Energy Transfer has abused its rights vis-à-vis GPI pursuant to Article 3:13 of the Dutch Civil Code. Energy Transfer's claims are manifestly unfounded, as explained above, as a result of which, in view of their evident lack of foundation, the filing of the claim should have been decided against in consideration

⁵⁴ DW Magazine December 15, 2023, "Texas Supreme Court Declines to Review Kelcy Warren's Defamation Suit Against Beto O'Rourke," see: <https://www.dmagazine.com/frontburner/2023/12/texas-supreme-court-declines-to-review-kelcy-warrens-defamation-suit-against-beto-orourke/>.

of GPI's interests involved.⁵⁵ This is evident from all the facts and circumstances outlined above: GPI will not enumerate them again to avoid repetition.

158. However, in particular, GPI points to the choice to file and continue to file the State Lawsuit even against GPI after the RICO Act causes of action in the Federal Lawsuit were found to be obviously without merit, and to the public statements by Energy Transfer and its representatives that clearly indicate exercise of the right to access court for no other purpose than to harm GPI.

7 GPI'S DAMAGES

159. As a result of Energy Transfer's tortious conduct, GPI has suffered damages. GPI notified Energy Transfer of its liability by letter dated July 23, 2024. Energy Transfer has expressly refused to mitigate these damages as requested by GPI, and as a result the damages continue to increase every day.
160. Pursuant to Article 17 (1) of the Directive, these damages, including the costs incurred by GPI, are eligible for compensation. In these proceedings GPI claims compensation for damages, to be assessed by the court pursuant to Article 612 of the Code of Civil Procedure. For referral to the damages assessment procedure, it is sufficient for GPI to make a plausible showing it has suffered damages.⁵⁶
161. In support of this, GPI's heads of damages will be explained below, by which GPI fulfils its obligation to assert them.⁵⁷ It is important to note here that the extent of these claims for damages has not yet been determined at this time, given that the State Lawsuit is in any event still in progress.
162. The damages consist of material and immaterial damages. The immaterial damages are in any case damage to reputation (Article 6:106 sub b of the Civil Code). There is also a special category of immaterial damages, namely damage resulting from the deliberate hindrance of a legal entity with a public interest purpose. Section 6:106(a) of the Dutch Civil Code makes it possible to claim compensation for immaterial damages if they were inflicted with "the intention of causing such damage". According to the government's explanation of this article:⁵⁸

"One can also think of intentionally obstructing a legal entity with a public benefit purpose in its achievement, a case that will not always be covered by the provision under b."

163. The main heads of damage in this regard can be described at this time as follows:
 - a. As a result of the SLAPPs filed against it, GPI has had to incur very significant costs for legal representation in the United States over many years, first for the defense of the Federal Lawsuit and then for the defense of the State Lawsuit. The cost of defending the State Lawsuit is still rising every day and will reach a new peak beginning in late February 2025, when the five-week jury trial of the State Lawsuit is expected to begin. The total amount of these costs is not yet fixed and will also depend to a significant degree on the further course of the litigation. These costs are expected to be capable

⁵⁵ Supreme Court, 6 April 2012, ECLI:NL:HR:2012:BV7828, NJ 2012/233 (*Duka/Achmea*), Supreme Court, 15 September 2017, ECLI:NL:HR:2017:2366 (*Alternative Construction and Development Combination Wateringsveld B.V. v. Defendants*).

⁵⁶ T&C Article 612 of the Code of Civil Procedure.

⁵⁷ *Id.*

⁵⁸ MoA II, Parliamentary History Civil Code Book 6, p. 380.

of determination in more detail in the follow-up proceedings for the determination of damages.

- b. The handling of Energy Transfer's SLAPPs has cost numerous GPI employees large amounts of time over years, which they are unable to devote to GPI's core mission (campaigning for a green and peaceful future). Again, the time investment of GPI employees continues to increase every day, and the total amount of this damage will depend greatly on the course of the procedure in the State Lawsuit.
 - c. In addition to investing time and (salary) costs, GPI is also forced to invest significant amounts of money in other costs associated with the long-running SLAPP cases. For example, GPI staff must regularly travel to the United States for procedural steps, which involves significant travel and lodging costs; consultations must take place with outside attorneys, and attention must be given to campaign activities associated with the case. Various aspects of the case also require the engagement of knowledgeable outside experts. The conduct of the present case also involves costs for GPI.
 - d. In a general sense, GPI's work is obstructed and held up by the Lawsuits, in many ways. For example, a disproportionate amount of attention has had to be given to GPI's work in the United States arising from the handling of (currently) the State Lawsuit, leaving less room for the fulfilment of GPI's objectives in other parts of the world. Also, the Lawsuits and all developments around them require continuous consultation between GPI, GP, Inc. and Greenpeace Fund, Inc.; after all, these are each independent entities with their own boards and powers. GPI can elaborate on this point if desired, but hopes that this provides some insight for your Court into how Energy Transfer's conduct has (knowingly) frustrated and continues to frustrate GPI's work. From this follow in particular the immaterial damages under Article 6:106 sub a of the Dutch Civil Code.
 - e. The SLAPPs that Energy Transfer has filed against GPI and the serious, unsubstantiated allegations that Energy Transfer has made about GPI result in continued reputational damage on the part of GPI.
164. Thus, there are several categories of damages, including in any case pecuniary damage, damage due to the deliberate obstruction of GPI, and reputational damage. According to the wording of Article 17(1) of the Directive ("the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third-country") these are all eligible for compensation. GPI reserves the right to claim additional heads of damage and/or items of damage, as it is quite possible that, due to the ongoing dynamics of the State Lawsuit, other categories of damage and/or items of damage than those set out above will also arise.
165. As the Defendants each play a largely equal role in the conduct outlined above and have continuously presented themselves as one front in this matter, including in communications, they are jointly and severally liable for the damages suffered by GPI. GPI therefore seeks a joint and several order to pay damages. This is already justified on the grounds that the defendants are (or were) each plaintiffs in the Federal Lawsuit and the State Lawsuit.⁵⁹ They relied in part on different causes of action in these cases, but in each case these were obviously unsubstantiated, and resulted in a disproportionate claim for damages. Therefore,

⁵⁹ GPI again notes that in the Federal Lawsuit, Dakota Access LLC was not a plaintiff, but Energy Transfer Partners, L.P. (the legal predecessor of Energy Transfer Operating, L.P.) as a majority shareholder of Dakota Access was. This is explained by the plaintiffs in the Federal Lawsuit in their First Amended Complaint, see Exhibit 10, par. 25.

the core of the tortious conduct (the joint instigation of SLAPPs and the defendants' conduct in that context) that GPI accuses defendants is identical for each defendant.

166. Energy Transfer's tortious and injurious actions against GPI are all the more objectionable given that Energy Transfer, as stated above, has expressly refused to cease its injurious actions and has indicated that it will pursue the State Lawsuit against GPI to its full extent. This, of course, does not diminish Energy Transfer's continuing obligation to act to mitigate damages, which it can easily do by, at a minimum, withdrawing the State Lawsuit, acknowledging without reservation liability for its tortious actions, and engaging in negotiations to further resolve the matter with GPI.
167. It follows from the above-described finding of tortious conduct and violation of various fundamental rights, and from the substantial damage suffered by GPI as a result, that the damage is attributable to Energy Transfer. The extent of these damages and any other issues surrounding them will be the subject of discussion in the follow-up proceedings for the determination of damages.

8 EXPLANATION OF THE DEMANDS

168. Under I(a), GPI seeks a declaratory judgment that Energy Transfer acted tortiously by bringing the Lawsuits against GPI and, in this connection, making false allegations about GPI. This formulation reflects that, as explained above, Energy Transfer's entire conduct, the bringing of SLAPPs against GPI and everything surrounding it, qualifies as a specific form of tortious conduct against GPI.
169. In addition, under I(b), GPI seeks a declaratory judgment that Energy Transfer abused its rights, specifically by commencing the Lawsuits, pursuant to Article 3:13 of the Dutch Civil Code and that these suits qualify as SLAPPs within the meaning of the Directive, *or in the alternative as* 'manifestly unfounded and abusive court proceedings' within the meaning of the Directive. In the event your Court wishes to stay close to the text of the Directive in the declaratory judgment it awards, in the alternative claim under I(b), the term "SLAPPs" has been replaced by the exact definition thereof from the Directive.
170. GPI has a compelling interest in the granting of these declaratory judgments, as it can thereby objectively demonstrate that an independent court has characterized Energy Transfer's conduct as tortious and an abuse of rights, constituting SLAPPs. Such a ruling, both in this case and in any future cases, will provide a powerful means of redress for victims of SLAPPs and involves a more meaningful judgment than a mere award of damages.
171. Under II, GPI seeks compensation for its damages and referral to follow-up proceedings for the determination of damages. As noted above, GPI does not have a sufficiently complete picture of its total damages at this time: they are increasing every day.
172. Under III, GPI claims publication by Energy Transfer of a notice on its website with a link to a pdf version of a sworn English translation (to be prepared at Energy Transfer's expense) of the judgment to be rendered in this case, as further specified in the prayer for relief. Article 3:296 and/or Article 6:162 and Article 6:103 of the Civil Code provide a sufficient basis in Dutch law for imposing such an obligation,⁶⁰ certainly read in conjunction with Article 15 of the Directive, which provides:

⁶⁰ See in this connection also the government's explanation of Article 3:3035a paragraph 4 of the Civil Code: "(...) it may be assumed that publication of a judgment is also possible outside the cases covered by these articles. If the relevant requirements are met, an order to publish a judgment can thereby be based on article 296 of Book

"Member States shall ensure that courts or tribunals seised of abusive court proceedings against public participation may impose effective, proportionate and dissuasive penalties or other equally effective appropriate measures, including the payment of compensation for damage or the publication of the court decision, where provided for in national law, on the party who brought those proceedings."

and Recital 42 of the Directive:

"The main objective of giving courts or tribunals the possibility of imposing penalties or other equally effective appropriate measures is to deter potential claimants from initiating abusive court proceedings against public participation. Other appropriate measures, including the payment of compensation for damage or the publication of the court decision, where provided for in national law, should be as effective as penalties."

173. GPI considers a period of two weeks for complying with this claim reasonable. To prevent Energy Transfer from removing the mandatory publication from its website after the expiry of some time, GPI seeks an order that Energy Transfer should keep the publication online at the place on its website where its archive of press releases can be found.
174. Under IV, as an incentive to comply with the publication sought under III, GPI seeks payment of a penalty of EUR 10,000 per day that Energy Transfer would not, or not fully, comply with the order to be pronounced under III, on the basis of Article 611a of the Code of Civil Procedure. The amount of this penalty payment has been partly determined in light of the financial strength of Energy Transfer, a company with an annual turnover of almost \$80 billion: the incentive to comply must be effective. In this light, GPI also points out that Energy Transfer must by now have spent tens of millions of dollars on pursuing the Lawsuits: it is thus a very financially strong party where the imposition of a high penalty is justified.
175. Finally, pursuant to Articles 14 and 17(1) of the Directive, GPI's full legal costs in this case are eligible for award (claim under V). Dutch civil procedural law already provides for this possibility pursuant to Article 237 paragraph 1 of the Code of Civil Procedure and Article 3:13 and 3:15 of the Civil Code, as explained by the government in the draft Explanatory Memorandum to the draft Implementation Act (Exhibit 33, p. 11 and 24) and (also) invoked by GPI in the present case:

"Under Article 14 of the Directive, a SLAPP target should be able to be compensated for the full costs of legal representation unless those costs are excessive. Dutch (procedural) law provides for this. In principle, in the Netherlands, the losing party is ordered to pay the costs (Article 237(1) Rv). The court can also leave the costs that were unnecessarily incurred or caused to be incurred for the account of the party that incurred or caused these costs. In SLAPPs, this offers sufficient room to deviate from the scoring system - which in principle applies to the calculation of costs - to come to a full award of costs. In practice, little use is made of this possibility of deviation, but precisely in cases of a manifestly unfounded claims or abuse of procedural law, unnecessary costs will often be involved, so that it is expected that (more) use can be made of this possibility, also in the light of the Directive."

176. GPI realizes that the awarding of full legal costs is unusual in the Dutch legal sphere and that Article 14 of the Directive relates primarily to cases in which the targets of a SLAPP are the

3 of the Civil Code, or on article 162 in conjunction with article 103 of Book 6 of the Civil Code". *Parliamentary Papers II* 1999-2000, 26 693, no. 6, p. 2.

defendants. At the same time, it appears from Article 14 and Article 17 of the Directive, read together and in the context of the intention of the Directive (as is also clear from recital 31), that a claim for the award of full legal costs may also be made in cases where parties invoke the provisions of Article 17(1) of the Directive. In this regard, GPI points out that the costs it had to incur for these proceedings clearly qualify as "costs incurred in connection with the proceedings before the court or tribunal of the third-country." Otherwise, the threshold for claiming the rights described in Article 17(1) Directive would become disproportionately high. In the event that your Court does not go along with this, GPI *alternatively* claims compensation of its legal costs in the usual manner.

177. The total amount of legal costs (including attorney's fees) in this case has not yet been determined. Prior to the hearing in this case, GPI will submit an overview of the legal costs incurred by it up to that point, including an estimate of the legal costs to be incurred up to judgment.

9 KNOWN DEFENSES OF ENERGY TRANSFER

178. Energy Transfer takes the position that the lawsuits it brought against GPI are not SLAPPs, but a legitimate exercise of its rights under North Dakota state law. Energy Transfer further believes that there is no legal basis to establish its liability under either European or Dutch law.
179. These views have been discussed and refuted in the foregoing.

10 EVIDENCE

180. The Plaintiff, to the extent the burden of proof would fall on it under Section 150 of the Code of Civil Procedure, offers proof of all its contentions, by all means in law. Several of GPI's employees involved in the Lawsuits could explain in greater detail the course of the proceedings and content of the Lawsuits, and GPI offers further evidence through submission of relevant procedural documents in the Lawsuits (to the extent permissible under applicable rules of U.S. law).
181. GPI believes it is abundantly clear that the Federal Lawsuit and the State Lawsuit, judged both separately and in conjunction, qualify as SLAPPs within the meaning of the Directive. Therefore, GPI has explained the main features of these cases in this summons, which it believes is sufficient for a thorough assessment of the case before the court. However, should it be necessary, GPI can provide further evidence on the Federal Lawsuit and/or the State Lawsuit by separate writ or by hearing as a witness one of its employees involved in the case

11 PRAYER FOR RELIEF

The plaintiff requests the District Court of Amsterdam to, by judgment, to the extent possible provisionally enforceable:

- I. declare that:
- a. Energy Transfer's conduct toward GPI, including bringing the Federal Lawsuit and the State Lawsuit and making false statements about GPI, is tortious towards GPI; and
 - b. Energy Transfer, by bringing the Federal Lawsuit and the State Lawsuit committed an abuse of rights under Article 3:13 of the Civil Code, and that these lawsuits

qualify as SLAPPs within the meaning of the Directive, *or at least* as "manifestly unfounded and abusive court proceedings" within the meaning of the Directive;

- II. order the defendants jointly and severally to compensate GPI for the damages suffered as a result of their tortious conduct toward GPI, to be assessed by the court and settled according to the law, all to be increased by the statutory interest, and to refer the parties to the follow-up proceedings for the determination of damages for this purpose;
- III. order the defendants, within two weeks of service of the judgment to be entered in this case:
 - a. to have a certified English translation of the judgment to be rendered in this case prepared and published in pdf format as specified below, at their own expense;
 - b. to publish and keep published the following text as a press release on Energy Transfer's website <energytransfer.com>, and to publish and keep published this text on Energy Transfer's "Newsroom" page <https://www.energytransfer.com/newsroom/>, hyperlinking in each case to the certified English translation of the judgment to be rendered in this case as referred to in III (a) of this prayer for relief:

"The Court of Amsterdam, the Netherlands has found, by judgment of [date judgment], that Energy Transfer, LP, Energy Transfer Operating LP and Dakota Access, LLC ("Energy Transfer") have acted tortiously against Greenpeace International by filing two lawsuits against Greenpeace International before the Federal and State Court of North Dakota and publicly accusing Greenpeace International, without any factual basis, of serious criminal and unlawful activities in the context of protests against the Dakota Access Pipeline.

Furthermore, the Court of Amsterdam found that the lawsuits Energy Transfer filed against Greenpeace International qualify as so-called "Strategic Lawsuits Against Public Proceedings" or "SLAPPs" and has ordered Energy Transfer to publish and keep published a sworn translation of its judgment on the website <energytransfer.com>. You can access this document by clicking here."

where this last word "here" in the text included above contains a hyperlink to a pdf version of the certified English translation of the judgment in this case.

- IV. order the defendants jointly and severally to pay a penalty of EUR 10,000 for each day that they do not, or do not fully, comply with the order to be issued under III;
- V. order the defendants jointly and severally to pay the full costs of these proceedings, including post-judgment costs, with the stipulation that if these costs are not paid within fourteen days of the date on which the judgment was rendered, legal interest will be due on them, *or in the alternative*, order the defendants jointly and severally to pay the costs of these proceedings, with the stipulation that if these costs are not paid within fourteen days of the date on which the judgment was rendered, legal interest will be due on them.

Cost of writ: € 144.47

The increase under Article 10 Btag was raised because the plaintiff could not set off the VAT.

This case is being handled on behalf of Stichting Greenpeace Council by *mr.* E.W. Jurjens of Prakken d'Oliveira Human Rights Lawyers, ejurjens@prakkendoliveira.nl , +31 20 344 6200.

Exhibit B

DAGVAARDING

Heden, de _____ tweeduizend vijftientig,

op verzoek van:

de **STICHTING GREENPEACE COUNCIL**, gevestigd te (1058 GV) Amsterdam aan het Surinameplein 118, die in deze zaak woonplaats kiest op het kantooradres van mr. E.W. Jurjens, werkzaam te Prakken d'Oliveira Human Rights Lawyers aan de Linnaeusstraat 2-A te Amsterdam (1092 CK), die in deze zaak tot advocaat wordt gesteld,

heb ik:

1. de vennootschap naar vreemd recht **Energy Transfer LP**, gevestigd in de staat Delaware en kantoorhoudende aan 8111 Westchester Drive, Dallas, Texas 75225 UNITED STATES OF AMERICA; voor het doel van betekening woonplaats kiezend bij haar "Registered Agent" **Corporation Service Company**, gevestigd aan 251 Little Falls Drive, Wilmington, Delaware 19808, Verenigde Staten;

mitsdien mijn exploot doende aan het parket van de ambtenaar van het Openbaar Ministerie van de rechtbank Amsterdam en twee afschriften dezès alsmede van vertaling hiervan in de Engelse taal latende aan:

aldaar werkzaam;

wordende afschrift dezès tevens per Fedex aan gerekwireerde toegezonden;

alsook per e-mail aan de e-mail adressen Media@energytransfer.com en InvestorRelations@energytransfer.com;

verzocht wordt het exploot te betekenen overeenkomstig de artikelen 3 t/m 6 van het verdrag van Gerechtelijke en Buitengerechtelijke Stukken in Burgerlijke- en Handelszaken van 15 november 1965, door eenvoudige afgifte of, zo dit niet mogelijk is, door betekening en

kennisgeving met inachtneming van de vormen, in de wetgeving van de Verenigde Staten van Amerika (Delaware) voorgeschreven voor de betekening en kennisgeving van stukken, in beide gevallen onder afgifte van een bewijs van ontvangst;

2. de vennootschap naar vreemd recht **Energy Transfer Operating, L.P.**, gevestigd in de staat Delaware van de Verenigde Staten en kantoorhoudende aan de 8111 Westchester Drive, Suite 600, Dallas, Texas 75225, Verenigde Staten, voor het doel van betekening woonplaats kiezend bij haar "Registered Agent" **Corporation Service Company**, gevestigd aan 251 Little Falls Drive, Wilmington, Delaware 19808, Verenigde Staten;

mitsdien mijn exploot doende aan het parket van de ambtenaar van het Openbaar Ministerie van de rechtbank Amsterdam en twee afschriften dezes alsmede van vertaling hiervan in de Engelse taal latende aan:

aldaar werkzaam;

wordende afschrift dezes tevens per Fedex aan gerekwireerde toegezonden;

alsook per e-mail aan de e-mail adressen Media@energytransfer.com en InvestorRelations@energytransfer.com;

verzocht wordt het exploot te betekenen overeenkomstig de artikelen 3 t/m 6 van het verdrag van Gerechtelijke en Buitengerechtelijke Stukken in Burgerlijke- en Handelszaken van 15 november 1965, door eenvoudige afgifte of, zo dit niet mogelijk is, door betekening en kennisgeving met inachtneming van de vormen, in de wetgeving van de Verenigde Staten van Amerika (Delaware) voorgeschreven voor de betekening en kennisgeving van stukken, in beide gevallen onder afgifte van een bewijs van ontvangst;

3. de vennootschap naar vreemd recht **Dakota Access LLC**, gevestigd in de staat Delaware van de Verenigde Staten en kantoorhoudende aan de 1300 Main Street Houston, Texas 77002-6803, Verenigde Staten, voor het doel van betekening woonplaats kiezend bij haar "Registered Agent" **Corporation Service Company**, gevestigd aan 251 Little Falls Drive, Wilmington, Delaware 19808, Verenigde Staten;

mitsdien mijn exploot doende aan het parket van de ambtenaar van het Openbaar Ministerie van de rechtbank Amsterdam en twee afschriften dezes alsmede van vertaling hiervan in de Engelse taal latende aan:

aldaar werkzaam;

wordende afschrift dezes tevens per Fedex aan gerekwireerde toegezonden;

alsook per e-mail aan de e-mail adressen Media@energytransfer.com, InvestorRelations@energytransfer.com en [REDACTED]

verzocht wordt het exploot te betekenen overeenkomstig de artikelen 3 t/m 6 van het verdrag van Gerechtelijke en Buitengerechtelijke Stukken in Burgerlijke- en Handelszaken van 15 november 1965, door eenvoudige afgifte of, zo dit niet mogelijk is, door betekening en kennisgeving met inachtneming van de vormen, in de wetgeving van de Verenigde Staten van Amerika (Delaware) voorgeschreven voor de betekening en kennisgeving van stukken, in beide gevallen onder afgifte van een bewijs van ontvangst;

gedagvaard om op **woensdag 2 juli 2025 om 10.00 uur**, niet in persoon maar vertegenwoordigd door een advocaat te verschijnen, op de zitting van de Rechtbank Amsterdam, aan de Parnassusweg 280 te (1076 AV) Amsterdam, Nederland;

MET AANZEGGING DAT:

- a. indien een gedaagde verzuimt advocaat te stellen of het hierna te noemen griffierecht niet tijdig betaalt, en de voorgeschreven termijnen en formaliteiten in acht zijn genomen, de rechter verstek tegen die gedaagde zal verlenen en de hierna omschreven vordering zal toewijzen, tenzij deze hem onrechtmatig of ongegrond voorkomt;
- b. indien ten minste één van de gedaagden in het geding verschijnt en het griffierecht tijdig heeft voldaan, tussen alle partijen één vonnis zal worden gewezen, dat als een vonnis op tegenspraak wordt beschouwd;

- c. bij verschijning in het geding van ieder van de gedaagden een griffierecht zal worden geheven, te voldoen binnen vier weken te rekenen vanaf het tijdstip van verschijning;
- d. de hoogte van de griffierechten is vermeld in de meest recente bijlage behorend bij de Wet griffierechten burgerlijke zaken, die onder meer is te vinden op de website: www.kbvg.nl/griffierechtentabel
- e. van een persoon die onvermogen is, een bij of krachtens de wet vastgesteld griffierecht voor onvermogenen wordt geheven, indien hij op het tijdstip waarop het griffierecht wordt geheven heeft overgelegd:

1e een afschrift van het besluit tot toevoeging, bedoeld in artikel 29 van de Wet op de rechtsbijstand, of indien dit niet mogelijk is ten gevolge van omstandigheden die redelijkerwijs niet aan hem zijn toe te rekenen, een afschrift van de aanvraag, bedoeld in artikel 24, tweede lid, van de Wet op de rechtsbijstand, dan wel

2e een verklaring van het bestuur van de raad voor rechtsbijstand, bedoeld in artikel 7, derde lid, onderdeel e, van de Wet op de rechtsbijstand waaruit blijkt dat zijn inkomen niet meer bedraagt dan de inkomens bedoeld in de algemene maatregel van bestuur krachtens artikel 35, tweede lid, van die wet;

- f. van gedaagden die bij dezelfde advocaat verschijnen en gelijklopende conclusies nemen of gelijklopend verweer voeren, op basis van artikel 15 van de Wet griffierechten burgerlijke zaken slechts eenmaal een gezamenlijk griffierecht wordt geheven;
- g. de eisende partij en gedaagden op basis van artikel 21 Rv verplicht zijn om de feiten die van belang zijn voor de beslissing van de rechter volledig en naar waarheid aan te voeren;
- h. de rechter op basis van artikel 149 Rv de gestelde feiten of rechten die door een partij zijn gesteld en door de wederpartij(en) niet of niet voldoende zijn betwist, als vaststaand moet beschouwen, behoudens de bevoegdheid van de rechter om bewijs te verlangen, zo vaak aanvaarding van de stellingen zou leiden tot een rechtsgevolg dat niet ter vrije bepaling van partijen staat;

teneinde op voormelde zitting te horen eisen en concluderen conform het navolgende:

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1 INLEIDING

1. In november 2016 ondertekent de Stichting Greenpeace Council (ook wel Greenpeace International, hierna: "**GPI**") samen met meer dan 500 andere organisaties een open brief van de gerenommeerde Nederlandse NGO BankTrack. De brief roept financiers van een uiterst controversiële oliepijpleiding die in North Dakota (Verenigde Staten) op dat moment in aanbouw is op hun financiële steun aan dit project te pauzeren totdat de ernstige zorgen van de Standing Rock Sioux-stam over het project naar volle tevredenheid zijn geadresseerd.
2. Het steunen van deze oproep is een legitieme en volstrekt gebruikelijke daad van publieke participatie, in het kader van een debat van publiek belang. Het staat iedereen vrij om over dit onderwerp een mening te hebben en deze publiekelijk te uiten. Dat is de kern van een gezond en pluriform publiek debat, wat een essentiële pijler is voor een goed functionerende en vrije democratische samenleving.
3. Het mede ondertekenen van de open brief van BankTrack is het enige bewijs op basis waarvan gedaagden (samen: "**Energy Transfer**") GPI tot tweemaal toe voor de Amerikaanse

rechter gesleept hebben.¹ Deze achtereenvolgende, extreem kostbare procedures slepen inmiddels al meer dan zeven jaar voort. Gedaagden eisen betaling van ten minste 300 miljoen dollar aan schadevergoeding. Daar komen nog juridische kosten bij, die naar verwachting ook tientallen miljoenen dollars zullen belopen.

4. Voor mensen die onbekend zijn met deze zaken klinkt dit wellicht als de samenvatting van een slechte en veel te dramatische Netflix-serie. De reactie die GPI vaak hoort als zij aandacht vraagt voor deze zaken is: dit kan toch niet waar zijn, zit er echt niet meer achter? Een bedrijf zou toch zeker geen jaren en miljoenen dollars besteden om GPI aansprakelijk te houden voor 'deelname aan een criminele organisatie', het hebben van een 'extremistische agenda' het bedrijven van een 'campagne van misinformatie', het 'oplichten van donoren' en 'gewelddadige aanvallen tegen de medewerkers van Energy Transfer'² – alleen vanwege het mede ondertekenen van één brief? De uitingsvrijheid is in de Verenigde Staten toch bijna heilig?
5. GPI begrijpt deze eerste reactie uiteraard: het is ook een bizarre zaak en de eisen zijn volledig ongegrond. Maar de zaak staat niet op zichzelf. Bepaald niet zelfs.
6. Energy Transfer maakt hier namelijk gebruik van een beproefd recept. De inzet van juridische machtsmiddelen door machtige en rijke partijen tegen publieke waakhonden zoals media en NGOs om hen het zwijgen op te leggen, financieel uit te putten en zo een 'chilling effect' te creëren is al vele jaren lang gemeengoed, en een probleem waar ook GPI al vaker mee geconfronteerd is. In de vorige eeuw hebben Amerikaanse academici die dit fenomeen bestudeerden hiervoor de term "Strategic Lawsuits Against Public Participation" bedacht.³ Het treffende acroniem is: "**SLAPP**".
7. In een paper uit 1989 concludeert prof. George W. Pring, die samen met prof. Penelope Canan deze term heeft bedacht, dat SLAPPs in de Verenigde Staten "frighteningly common" zijn en dat "there is no dearth of victims: in the last two decades, thousands of citizens have been sued into silence." De kleinste handeling van publieke participatie kan aanleiding geven tot een kostbare en langdurige rechtszaak – prof. Pring noemt als voorbeelden onder meer "circulating a petition", "support[ing] a public interest, law-reform lawsuit" en "speak[ing] up at a school board meeting about a bad teacher or unsafe brakes on school buses". Hij constateert dat het doel van een SLAPP anders is dan een reguliere rechtszaak:

"The apparent goal of SLAPPs is to stop citizens from exercising their political rights or to punish them for having done so. SLAPPs send a clear message: that there is a "price" for speaking out politically. The price is a multimillion-dollar lawsuit and the expenses, lost resources, and emotional stress such litigation brings. This is a message with import for every American, activist or not. As these suits become an increasing (and increasingly known) risk for the ordinary citizen who decides to speak out on a public issue, SLAPPs raise substantial concern for the future of citizen

¹ Samen met enkele andere gedaagden, die evenzeer niets te verwijten valt.

² Dit is nog maar een beperkte bloemlezing van de ernstige verwijten die Energy Transfer de afgelopen jaren jegens GPI heeft gemaakt in rechtszaken en publieke uitingen.

³ Onder meer door prof George W. Pring, zie: George W. Pring, SLAPPs: Strategic Lawsuits against Public Participation, 7 Pace Env'tl. L. Rev. 3 (1989). DOI: <https://doi.org/10.58948/0738-6206.1535>. De citaten in de rest van deze inleiding zijn eveneens afkomstig uit dit paper.

involvement or public participation in government, a fundamental precept of representative democracy in America.”

8. Prof. Pring formuleert het treffend. “There is a price for speaking out”. Kelcy Warren, medeoprichter en grootaandeelhouder van Energy Transfer, heeft in de media over de rechtszaken tegen GPI gezegd:

“Everybody’s afraid of these environmental groups and the fear that it may look wrong if you fight back (...) but what they did to us is wrong, and they’re going to pay for it [...] They’re going to pay for this, they’re going to pay for this.”

9. De prijs die GPI betaalt voor het mede ondertekenen van een brief in 2016 is het al meer dan zeven jaar betrokken zijn in ongefundeerde, slepende en uiterst kostbare rechtszaken door Energy Transfer. In grote delen van de Verenigde Staten en in Europa bestaat een brede consensus bij wetgevers dat geen enkele partij een dergelijke prijs zou mogen betalen voor legitieme en normale deelname aan het publieke debat. Zij signaleren terecht – evenals prof. Pring in bovenstaand citaat – dat SLAPPs een serieuze bedreiging vormen voor een democratie.
10. In veel staten in de VS bestaat daarom al jarenlang wettelijke bescherming tegen SLAPPs (maar niet in de staat waar GPI is aangeklaagd door Energy Transfer). Ook in Europa is de afgelopen jaren wet- en regelgeving aangenomen die media, NGO’s en andere ‘public watchdogs’ moeten beschermen tegen SLAPPs. Onderdeel van deze wet- en regelgeving is dat het in elke EU-lidstaat mogelijk moet zijn om de nationale rechter te vragen om bescherming tegen SLAPPs die buiten de EU tegen een in die lidstaat gevestigde ‘public watchdog’ zijn aangespannen.⁴ De Nederlandse wetgever heeft eind vorig jaar bevestigd dat deze vormen van bescherming tegen SLAPPs al mogelijk zijn onder het toepasselijke Nederlandse recht.
11. GPI doet in deze zaak, voor zover haar bekend voor het eerst in de EU, een beroep op de rechtbank in het land waar zij is gevestigd om haar te beschermen tegen de SLAPPs in een derde land (te weten de VS). GPI vordert in deze zaak onder meer een verklaring voor recht, vergoeding van kosten en schade geleden als gevolg van de tegen haar aangespannen SLAPPs en publicatie van het in deze zaak te wijzen vonnis (zie vorderingen en toelichting, par. 8) op grond van de hierna te bespreken feitelijke (par. 2-3) en juridische (par. 4-7) grondslagen.
12. Zoals uit deze dagvaarding blijkt is het belang van deze zaak voor GPI enorm. Daarnaast zal deze zaak ook een belangrijke signaalfunctie hebben. In de EU gevestigde media, NGO’s en andere publieke waakhonden hebben veel te maken met SLAPPs binnen en buiten de EU (denk ook aan het Verenigd Koninkrijk). Het is de duidelijke bedoeling van de Europese en Nederlandse wetgevers om vergaande bescherming te bieden aan doelwitten van SLAPPs. Voor het verwezenlijken van deze praktische en effectieve bescherming spelen de nationale rechters een cruciale rol. Ook om die reden verzoekt GPI uw Rechtbank de in deze zaak ingestelde vorderingen toe te wijzen.

⁴ Artikel 17 lid 1 Richtlijn (EU) 2024/1069 van het Europees Parlement en de Raad van 11 april 2024 betreffende bescherming van bij publieke participatie betrokken personen tegen kennelijk ongegronde vorderingen of misbruik van procesrecht (“strategische rechtszaken tegen publieke participatie”).

13. De in deze dagvaarding genoemde producties zijn meebetekend met de dagvaarding en zullen tezamen met de dagvaarding op de eerst dienende dag in het geding worden gebracht.

1.1 Eiseres

14. Eiseres in deze zaak, Stichting Greenpeace Council, tevens opererend onder de naam Greenpeace International (hierna: “**GPI**”) is een in Amsterdam gevestigde stichting met ANBI-status. GPI heeft als statutaire doelstelling het bevorderen van natuurbehoud (art. 3 van de statuten van GPI, **productie 1**). Een uittreksel uit het Handelsregister van GPI wordt overgelegd als **productie 2**.
15. GPI voert de coördinatie over het Greenpeace-netwerk, dat naast GPI 25 onafhankelijke nationale en regionale organisaties (“**nro’s**”) omvat. Deze nro’s zijn zelfstandige juridische entiteiten en hebben hun eigen besturen, die onafhankelijk zijn van GPI. GPI faciliteert de ontwikkeling van een lange-termijn strategisch campagneprogramma voor het Greenpeace-netwerk (het zogeheten ‘Framework’). Het netwerk gebruikt vreedzame, creatieve confrontatie om wereldwijde milieuproblemen aan de kaak te stellen en oplossingen te ontwikkelen voor een groene en vreedzame toekomst. Op basis van dit campagneprogramma ontwikkelen de nro’s zelfstandig projecten en voeren deze uit binnen hun territorium. Daarnaast is GPI de houder van de geregistreerde merken van Greenpeace, en verstrekt zij aan de nro’s een licentie om (onder meer) het merk GREENPEACE te gebruiken.⁵ Tot de kernwaarden van Greenpeace behoren geweldloosheid en onafhankelijkheid. Greenpeace-organisaties nemen geen giften aan van overheden en bedrijven.

1.2 Gedaagden

16. Gedaagde 1, Energy Transfer, L.P. is een vennootschap naar vreemd recht, te weten het recht van de staat Delaware (Verenigde Staten). Gedaagde 2, Energy Transfer Operating, L.P. is eveneens een vennootschap naar vreemd recht, te weten het recht van de staat Delaware. Voorheen opereerden zij respectievelijk onder de handelsnamen Energy Transfer Equity, L.P. (gedaagde 1) en Energy Transfer Partners, L.P. (gedaagde 2).⁶ Ook gedaagde 3, Dakota Access, LLC, is een vennootschap naar vreemd recht, te weten het recht van de staat Delaware. Hoewel gedaagden allen (ook) kantoor houden in Dallas, Texas zijn zij gevestigd in de staat Delaware, zoals volgt uit respectievelijke uittreksels van hun registraties in de officiële registers van de Division of Corporations van de staat Delaware (**productie 3**). Daarbij is een bijzonderheid dat, zoals volgt uit het online te benaderen register van deze Division, gedaagden allen gebruik maken van een zogeheten “Registered Agent” (**productie**

⁵ Zie ook: <https://www.greenpeace.org/international/about/structure/>.

⁶ Zie in dit verband het persbericht van Energy Transfer d.d. 19 oktober 2018, ‘Energy Transfer Equity, L.P. and Energy Transfer Partners, L.P. Complete Merger, Simplify Structure’, op: <https://ir.energytransfer.com/news-releases/news-release-details/energy-transfer-equity-lp-and-energy-transfer-partners-lp>:

“Energy Transfer Equity, L.P. (“ETE”) and Energy Transfer Partners, L.P. (“ETP”) today announced the completion of their previously announced merger of ETE with ETP. (...) As part of the merger, ETE changed its name to “Energy Transfer LP” and its common units will begin trading on the New York Stock Exchange (“NYSE”) under the “ET” ticker symbol at the opening of the market today. In addition, ETP changed its name to “Energy Transfer Operating, L.P.”

4), te weten de Corporation Service Company. Bij het klikken op de term 'Registered Agent' in dit online register verschijnt de volgende uitleg van dit concept (**productie 5**):

"Every corporation shall have and maintain in this State a registered agent in each case, having a business office which generally is open during normal business hours to accept service of process and otherwise perform the functions of a registered agent. Such agent may be an individual or business entity authorized to transact business in the State of Delaware. The data presented in this field denotes the agent name, address and phone number of such agent for the entity you are viewing."

17. De Registered Agent is dus, zo begrijpt GPI, een agent die namens een andere partij gemachtigd is om stukken ter betekening voor die partij te accepteren. Daarom heeft GPI deze dagvaarding en de bijgevoegde producties (ook) betekend aan deze Registered Agent, te weten de Corporation Service Company.
18. Gedaagden behoren allemaal tot hetzelfde concern. Gedaagde 1 is het moederbedrijf van gedaagde 2. Gedaagde 2 is op zijn beurt meerderheidsaandeelhouder in gedaagde 3. Gedaagden zullen hierna gezamenlijk worden aangeduid als "**Energy Transfer**".
19. De 'core business' van Energy Transfer is het vervoeren en (al dan niet tijdelijk) opslaan van brandstoffen als gas en olie.⁷ Energy Transfer is de eigenaar van (naar zij stelt) het grootste netwerk van pijpleidingen voor het transporteren van deze brandstoffen in de Verenigde Staten.

2 FEITEN: ACHTERGROND

2.1 De controverse rondom de Dakota Access Pipeline (DAPL)

20. In 2014 begint Energy Transfer met de voorbereidingen van de bouw van een bijna 2.000 km lange ondergrondse oliepijpleiding die vanuit North Dakota naar Illinois loopt. Deze uiterst omstreden pijpleiding is bekend komen te staan als de "Dakota Access Pipeline" (hierna: "**DAPL**").
21. In de oorspronkelijke plannen zou de DAPL stroomopwaarts van Bismarck (de hoofdstad van North Dakota) onder de Missouri-rivier doorlopen. De betrokken overheidsorganen uitten, toen zij bekend werden met de geplande route, echter zorgen dat een olielekkage op die plek de watervoorziening voor Bismarck in gevaar zou brengen.⁸ De voorgestelde route is vervolgens naar het zuiden verlegd, stroomafwaarts van Bismarck. Dit is goed te zien op de als **productie 6** overgelegde kaart van Vox Media.
22. De nieuwe route voor de DAPL is echter ook uiterst controversieel. Energy Transfer kiest namelijk een pad dat loopt door land dat volgens verdragen uit de 19^e eeuw "unceded Indian territory" is. De beoogde kruising met de Missouri-rivier ligt een halve mijl stroomopwaarts van het huidige reservaat van de Standing Rock Sioux-stam, onder Lake Oahe, een stuwmeer in de rivier.

⁷ Zie: <https://www.energytransfer.com/about/>.

⁸ New Yorker 6 september 2016, 'A Pipeline Fight and America's Dark Past', <https://www.newyorker.com/news/daily-comment/a-pipeline-fight-and-americas-dark-past>.

23. Voor een goed begrip waarom de voorgestelde route voor de DAPL tot zo veel zorgen bij inheemse bevolking in het gebied leidde, is het behulpzaam een schets te geven van hun geschiedenis met de Amerikaanse regering. GPI claimt geen expertise over dit onderwerp; het navolgende is een poging om de feiten zoals die uit een processtuk van de Standing Rock Sioux-stam naar voren komen, bondig samen te vatten.
24. De Standing Rock Sioux-stam maakt deel uit van een grotere inheemse natie, de Oceti Sakowin Oyate (Lakota voor “Zeven Raadsvuren”), of, in het Engels, de Great Sioux Nation. De voorouders van de stam sloten in de 19^e eeuw twee belangrijke verdragen met de Verenigde Staten. In het Verdrag van Fort Laramie van 1851 erkenden de Verenigde Staten een groot gebied ten zuiden van de Heart-rivier als land van de Sioux. Vanaf 1864 zorgden doortrekkende goudzoekers echter voor toenemende verstoring in belangrijke bizonjachtgebieden. Het resulterende conflict werd in 1868 beslecht met een nieuw Verdrag van Fort Laramie. Dit verdrag vestigde de Great Sioux Reservation. Gebieden die in het verdrag van 1851 als land van de Sioux aangemerkt waren, maar nu buiten de Great Sioux Reservation kwamen te liggen, worden in artikel XVI van het verdrag aangemerkt als “unceded Indian territory”.⁹ Zie in dit kader de als productie 6 overgelegde kaart waar een relevant deel van dit gebied op is gemarkeerd.
25. De rust mocht niet lang duren. In 1874 troffen Amerikaanse soldaten goud aan tijdens een expeditie naar de heilige Black Hills, binnen de Great Sioux Reservation. De Sioux weigerden de heuvels aan de federale regering te verkopen, waarna er opnieuw oorlog uitbrak. De Cheyenne en Sioux (onder andere aangevoerd door de befaamde Sitting Bull) brachten de regeringstroepen een gevoelige nederlaag toe in de Slag bij de Little Bighorn. Uiteindelijk slaagden de Verenigde Staten erin hun wil op te leggen. Het Amerikaanse Congres nam in 1877 een wet aan die de Black Hills aan de Great Sioux Reservation onttrok. Vervolgens stelde het Congres in 1889 nieuwe grenzen vast voor een aantal kleinere reservaten, waaronder de Standing Rock Sioux Reservation.¹⁰ De Great Sioux Nation heeft deze eenzijdige, verdragsschendende handelingen nooit erkend. Het Hooggerechtshof van de Verenigde Staten oordeelde in 1980 dat “A more ripe and rank case of dishonorable dealings will never, in all probability, be found in our nation’s history” en kende schadeloosstelling toe voor wat het aanmerkte als de onteigening van de Black Hills.¹¹ De Sioux hebben deze schadeloosstelling nooit geïncasseerd, omdat zij de rechtsgeldigheid van de onteigening niet erkennen.
26. Later zijn voor de aanleg van Lake Oahe in de jaren ‘60 van de vorige eeuw grote delen van de Standing Rock Sioux Reservation en de Cheyenne River Reservation door de autoriteiten onder water gezet en werden de inwoners van dit gebied gedwongen te vertrekken. Zie voor meer achtergronden in dit verband **productie 7**, een ‘federal complaint’ van de Standing Rock Sioux Tribe uit 2016 tegen de US Army Corps of Engineers.
27. Gezien deze geschiedenis ligt het voor de hand dat de aanleg van de DAPL op land dat de Sioux als “unceded Indian territory” beschouwen, beladen is. Bovendien zijn de Standing Rock en Cheyenne River Sioux-stammen op vele manieren afhankelijk van het water van Lake Oahe, onder andere voor drinkwater, landbouwdoeleinden, industrie en heilige religieuze en

⁹ Standing Rock Sioux Tribe v. U.S. Army Corps Engineers and Others, Complaint van 14 oktober 2024, par. 23-25.

¹⁰ Standing Rock Sioux Tribe v. U.S. Army Corps Engineers and Others, Complaint van 14 oktober 2024, par. 26.

¹¹ United States v. Sioux Nation of Indians, 448 U.S. 371 (1980).

medicinale gebruiken. Beide stammen beschouwen het water als heilig en als centraal onderdeel van de uitoefening van hun religie. Evenals in Bismarck ontstaan er dus voorafgaand aan de aanleg van de DAPL grote zorgen over de impact van de pijpleiding op de watervoorziening van de stam. Ook zijn er zorgen dat de aanleg van de DAPL kan leiden tot schade aan oude begraafplaatsen of andere plaatsen van cultureel of historisch belang voor de stam.

28. In maart 2016 begint Energy Transfer al met de bouw van de DAPL, ook al heeft zij daar nog niet de benodigde vergunningen en 'easements' (een vorm van erfdienstbaarheden) voor. In april 2016 richten stamleden nabij Cannonball (North Dakota) een gebedskampement op als centraal punt voor weerstand tegen de DAPL. Al snel vindt het verzet weerklink en de demonstraties worden na april 2016 gestaag omvangrijker.
29. Het verantwoordelijke bestuursorgaan, de US Army Corps of Engineers (USACE), verleent Energy Transfer ondanks de zorgen van de stammen op 25 juli 2016 een vergunning om de DAPL onder Lake Oahe aan te leggen. Dit ervaren de 'Water Protectors' en hun medestanders als een schril contrast met de situatie rondom Bismarck, waar identieke zorgen over de watervoorziening de autoriteiten er als gezegd toe brachten de route van de DAPL te verleggen. Op 27 juli 2016 klaagt de Standing Rock Sioux-stam de USACE aan vanwege het verstrekken van de vergunning (productie 7). Van belang daarbij is dat naast een vergunning ook een 'easement' nodig was voor het boren onder de rivier: die is op dat moment niet verstrekt door de USACE.
30. De gebedskampen blijven ondertussen doorgaan en worden groter naarmate de aanleg van de DAPL vordert. Midden augustus 2016 roept de Stamraad van de Standing Rock Sioux-stam de inheemse gemeenschappen van de Verenigde Staten op tot steun. Meer dan 300 inheemse stammen en duizenden niet-inheemse demonstranten sluiten zich bij het verzet aan. Rond deze tijd spant Dakota Access, LLC een rechtszaak wegens ervredebreuk en belemmering van de bouwactiviteiten aan tegen stamvoorzitter Dave Archambault, een ander lid van de stamraad, en een aantal individuen. De federale rechter wijst deze zaak meteen af met de vaststelling: "Dakota Access' assertions that the Defendants proximately caused it losses of over \$75,000 are the kind of "naked assertion[s] devoid of further factual enhancement," which are insufficient to form the basis of a complaint."¹²
31. De protesten verlopen grotendeels vreedzaam, maar gedurende de periode augustus-november 2016 zijn er verschillende confrontaties tussen enerzijds de demonstranten en anderzijds de politie en het private veiligheidsbedrijf TigerSwan dat door Energy Transfer is ingehuurd ter bewaking van de werkzaamheden rondom het DAPL-project.¹³
32. In het kader van de procedure tegen de USACE dient de Standing Rock Sioux-stam op 2 september 2016 een beëdigde verklaring in van Tim Mentz Sr., een lid van de stam en exploitant van een bedrijf in North Dakota dat voor veel infrastructuurprojecten de locatie van historische culturele artefacten van de inheemse stammen in het gebied vaststelt. De

¹² 'Order' van 18 mei 2017 naar aanleiding van de 'motions to dismiss' van gedaagden, beschikbaar op:
[https://waterprotectorlegal-](https://waterprotectorlegal-org.nyc3.cdn.digitaloceanspaces.com/production/app/uploads/2017/05/2017.05.18-Order.pdf)

[org.nyc3.cdn.digitaloceanspaces.com/production/app/uploads/2017/05/2017.05.18-Order.pdf](https://waterprotectorlegal-org.nyc3.cdn.digitaloceanspaces.com/production/app/uploads/2017/05/2017.05.18-Order.pdf)

¹³ Het bedrijf TigerSwan paste daarbij militaire tactieken toe en probeerde de demonstranten te infiltreren, zoals later bleek. Zie in dit kader ACLU 2 juni 2017, 'Why Did a Private Security Contractor Treat Standing Rock Protesters Like 'Jihadists'?', <https://www.aclu.org/news/free-speech/why-did-private-security-contractor-treat-standing-rock>.

verklaring bevat gedetailleerde informatie over begraafplaatsen en plekken van cultureel belang die in en vlak langs het pad van de DAPL liggen (inclusief GPS-gegevens). Onderdeel van de vragen die voorliggen in de door de Standing Rock Sioux-stam aangespannen procedure is of Energy Transfer wel het recht heeft om de DAPL over deze plekken aan te leggen. Daar bestaat in de procedure dus een actuele discussie over tussen partijen, waarbij vanuit het perspectief van de stam geldt dat de beoogde route van de DAPL plekken van historisch en cultureel belang doorkruist.

33. Binnen 24 uur na het indienen van dit document – op een zaterdag – laat Energy Transfer met bulldozers het gebied waarin deze plekken zich bevinden wegvagen. Honderden inheemse demonstranten proberen dit te voorkomen maar worden aangevallen met honden en pepperspray.¹⁴ Deze agressieve handelwijze van het door Energy Transfer ingehuurd veiligheidsbedrijf leidt tot veel ophef en (inter)nationale media-aandacht, waardoor de demonstraties ook groter worden (**productie 8** – artikel in The Guardian uit november 2016 over de demonstraties).
34. Begin december 2016 weigert de USACE de benodigde ‘easement’ te verstrekken aan Energy Transfer. De aanleg van de DAPL kan daarom niet worden voortgezet. Echter, nadat Donald Trump in 2017 aan de macht komt beveelt hij via een ‘Executive Order’ de USACE om alsnog de benodigde ‘easement’ te verstrekken. Dat doet de USACE. Vervolgens wordt de aanleg van de DAPL afgerond, en wordt de pijpleiding in juni 2017 in gebruik genomen. Trump tekent deze ‘Executive Order’ overigens al vier dagen na zijn inauguratie. Kelcy Warren, medeoprichter en grootaandeelhouder van Energy Transfer, heeft USD 250.000,- geschonken voor de inauguratie van Trump, nadat hij al USD 100.000,- had gedoneerd aan Trumps gezamenlijke fondsenwervingsoperatie, Trump Victory.¹⁵
35. De procedures over de DAPL duren echter tot op de dag van vandaag voort, en er is een mogelijkheid dat de uitkomst daarvan zal zijn dat de DAPL alsnog verlegd dient te worden. Een federale rechter oordeelde in 2020 in de door de Standing Rock Sioux-stam aangespannen zaak dat het Army Corps of Engineers een Environmental Impact Statement (EIS) had moeten opstellen, vernietigde de verleende ‘easement’ (erfdienstbaarheid) voor bouw onder de Missouri-rivier en beval het stilleggen van de pijpleiding. Deze beslissing bleef ook in beroep in stand, behalve dat de Court of Appeals het gebod om de pijpleiding stil te leggen vernietigde. De EIS-procedure is nog niet voltooid. Inmiddels is de stam nogmaals naar de rechter gestapt en vordert de sluiting van de pijpleiding. De stam beroept zich daarin onder andere op het ontbreken van een geldige ‘easement’, het opzettelijk vernietigen van begraafplaatsen, en het feit dat Energy Transfer momenteel uitgesloten is van federale contracten vanwege “a lack of business honesty or integrity”,¹⁶ volgend op strafrechtelijke veroordelingen na ernstige milieu-incidenten bij de aanleg van een andere pijpleiding.

¹⁴ Indian Country / Today MediaNetwork.com 4 september 2016, ‘Manning: ‘And Then the Dogs Came’: Dakota Access Gets Violent, Destroys Graves, Sacred Sites’, gearchiveerd via de Internet Archive WayBack Machine: <https://web.archive.org/web/20161213104458/http://indiancountrytodaymedianetwork.com/2016/09/04/manning-and-then-dogs-came-dakota-access-gets-violent-destroys-graves-sacred-sites-165677>.

¹⁵ E&E News 9 mei 2024, ‘Billionaire Kelcy Warren invests in pipelines — and Trump’, <https://www.eenews.net/articles/billionaire-kelcy-warren-invests-in-pipelines-and-trump/>.

¹⁶ Zie ‘Exclusion: Energy Transfer L.P., U.S. General Services Administration’, <https://sam.gov/exclusions-new?pirKey=478731&pirValue=1667217418431194>.

3 FEITEN: ROL GPI EN RECHTSZAKEN ENERGY TRANSFER TEGEN GPI

3.1 Ondertekening open brief BankTrack door GPI en rol Greenpeace, Inc.

36. De demonstraties tegen de DAPL trekken wereldwijd de aandacht en worden door allerlei organisaties op verschillende manieren gesteund. De Nederlandse NGO BankTrack steunt op 30 november 2016 het verzet tegen de aanleg door de publicatie van een open brief aan de financiers van de DAPL, een syndicaat van financiële organisaties geleid door Citibank. Deze brief wordt als **productie 9** overgelegd.
37. In de brief wordt de hiervoor geschetste situatie rondom de DAPL weergegeven, en wordt op grond daarvan geëist dat de financiële organisaties het uitbetalen van de lening opschorten totdat de bouwwerkzaamheden aan de pijplijn stopgezet zijn en alle openstaande kwesties tot volle tevredenheid van de Standing Rock Sioux-stam zijn opgelost. De brief is mede ondertekend door meer dan 500 organisaties uit meer dan 50 landen. Een willekeurige greep: het gaat om organisaties als de Center for International Environmental Law (VS), Friends of the Earth International (wereldwijd), de Norwegian Saami Association (Noorwegen), Re:common (Italië), Urgenda (Nederland) en verschillende organisaties uit het Greenpeace-netwerk, waaronder GPI (zie productie 9, p. 9).
38. Het ondertekenen van de open brief van BankTrack is de volledige betrokkenheid van GPI bij de demonstraties tegen de DAPL. Eén van de twee Amerikaanse Greenpeace-entiteiten, Greenpeace, Inc. (hierna: "**GP Inc.**"), heeft op verzoek van de inheemse stammen beperkte steun geleverd.
39. Deze steun bestond met name uit een donatie van USD 15.892,- om vijf inheemse trainers van de organisatie Indigenous Peoples Power Project ("**IP3**") in staat te stellen twee weken lang demonstranten te trainen in de geschiedenis en beginselen van geweldloze acties. Eén van deze trainers was tevens werknemer van GP Inc. De IP3-trainingen volgden beginselen die ontwikkeld waren door IP3 en de stamraad van de Standing Rock Sioux-stam. Deelnemers moesten kennisnemen van "Direct Action Principles" die op een groot bord stonden. Vreedzaamheid, gebed en geweldloosheid stonden daarin centraal, evenals afwijzing van beschadiging van eigendommen, als iets dat "ons niet dichterbij ons doel brengt".
40. Daarnaast heeft GP Inc. spullen aan de kampementen beschikbaar gesteld, deels opgehaald bij een inzameling. Het ging hoofdzakelijk om kampeeruitrusting, voedsel, kleding, verf, een voertuig met zonnepanelen voor elektriciteit en internettoegang, een EHBO-kit en een aantal passieve bevestigingsmiddelen die 'lockboxes' heten – plastic buizen met metalen pinnen, waarbij overigens geen bewijs is dat deze gebruikt zijn of enige schade hebben veroorzaakt. In totaal zijn 6 medewerkers van GP Inc. ter plaatse geweest (van de naar schatting 100.000 aanwezigen), die hielpen bij taken als het opzetten van tenten en het winterklaar maken van het kamp. De eerste kwam aan op 5 september 2016, vijf maanden na aanvang van de protesten, en er waren nooit meer dan drie GP Inc. medewerkers gelijktijdig ter plaatse. De laatste vertrok eind december. GPI was in het geheel niet betrokken bij deze activiteiten en tot eind oktober 2016 zelfs niet op de hoogte van deze activiteiten. GPI heeft ook geen financiële steun verleend aan de demonstraties.

3.2 De Federale Rechtszaak: 2017-2019

41. Op 22 augustus 2017 begint Energy Transfer een rechtszaak voor de federale rechter in North Dakota tegen BankTrack, twintig individuen zonder naam, EarthFirst!, Greenpeace Fund, Inc., GPI en GP Inc. (de "Federale Rechtszaak").¹⁷ GP Inc. is de onafhankelijke Amerikaanse nro binnen het Greenpeace-netwerk, die zoals hierboven beschreven een beperkte rol speelde bij de demonstraties tegen de DAPL. Greenpeace Fund, Inc. is een aparte non-profit entiteit die in overeenstemming met haar doelstelling bepaalde activiteiten van GP Inc. bevordert, met name door het verstrekken van fondsen. Greenpeace Fund, Inc. had – net als GPI – geen enkele betrokkenheid bij de protesten.
42. De Federale Rechtszaak is gebaseerd op de 'Racketeer Influenced and Corrupt Organizations Act', ofwel de RICO Act, en enkele wetten van de staat North Dakota. De RICO Act is een federale wet die een grondslag biedt voor civiele acties als een partij doelwit is van handelingen die verricht zijn in het kader van een criminele organisatie.
43. Bij vonnis van 25 juli 2018 verwerpt de federale rechter de zaak tegen BankTrack na een eerste beoordeling, omdat de dagvaarding geen kenbare gronden ten aanzien van haar bevat, noch gronden voor de uitoefening van rechtsmacht. Een dag later verplicht de rechter Energy Transfer om de gronden van haar zaak jegens de gedaagde Greenpeace-entiteiten aan te vullen door het indienen van een zogeheten 'Amended Complaint'. Ten aanzien van EarthFirst! blijkt onder meer niet voldaan aan betekeningsvereisten, en de rechter verwerpt de zaak tegen die partij eveneens (vonnis van 22 augustus 2018).
44. Energy Transfer dient haar 'Amended Complaint' in op 8 juni 2018, welk stuk wordt overgelegd als **productie 10**. Het is een 77 pagina's tellende document waarin Energy Transfer de volgende samenzweringstheorie uit de doeken doet (productie 10, p. 10):

"Since no later than July 2016, Energy Transfer has been the target of a malicious and hostile campaign arising from its development, construction, and operation of DAPL (...) The campaign against Energy Transfer was conducted by an illegal Enterprise comprised of various legally distinct but associated-in-fact environmental organizations, individuals, and others who worked in concert with one another for the purpose of carrying out the pattern of racketeering activity directed at stopping DAPL and funding themselves and other enterprise members executing the predicate acts"
45. GPI zou samen met de andere gedaagden onderdeel uitmaken van deze 'illegal Enterprise' en wordt als onderdeel van deze beweerdelijke 'Enterprise' in het stuk beschuldigd van onder meer het hebben van een "history of engaging in property destruction and criminal sabotage in pursuit of its manufactured causes", het verspreiden van "false, misleading and manufactured claims about Energy Transfer and DAPL (...) for the purpose of fraudulently inducing donations to fund these activities and harm Energy Transfer", "manufactur[ing] and disseminat[ing] six categories of misinformation which were intentionally and expressly

¹⁷ United States District Court, District of North Dakota, Case 1:17-cv-00173-BRW-CRH (*Energy Transfer/BankTrack et al*). GPI merkt op dat Dakota Access LLC in de Federale Rechtszaak geen eiser was, maar Energy Transfer Partners, L.P. (de rechtsvoorganger van Energy Transfer Operating, L.P.) als meerderheidsaandeelhouder van Dakota Access LLC wel. Dit is in de First Amended Complaint in de Federale Rechtszaak nader toegelicht door eisers: zie productie 10, par. 25.

marketed to the public as “facts”, based on “research” and “science” (...), het verspreiden van ‘misinformation’ met als doel “to fraudulently mislead and incite members of the public to criminal trespass, violence and property destruction”, het gebruik van haar financiële middelen “to directly and indirectly support these criminal activities”, het rekruteren en financieren van “violent elements from out-of-state to descend on North Dakota” en het “knowingly and intentionally” publiceren van “false and injurious statements” over Energy Transfer, die zouden zijn gepubliceerd met “actual malice” (zie productie 10, p. 14-15 en vanaf p. 69).

46. Deze beschuldigingen zijn op niets gebaseerd en zijn pure fictie. Zoals hiervoor toegelicht had GPI op het moment dat de Federale Rechtszaak tegen haar werd aangespannen niets anders gedaan dan het mede ondertekenen, samen met meer dan 500 andere organisaties, van een open brief van BankTrack. Er was en is geen legitieme reden voor Energy Transfer om GPI (of overigens de andere Greenpeace-organisaties) in rechte te betrekken.
47. Door deze beweerdelijke ‘deelname aan een criminele organisatie’ van GPI (waar dus geen enkele grond voor is en was) stelt Energy Transfer in de ‘Amended Complaint’ maar liefst ten minste USD 300 miljoen aan schade te hebben geleden (productie 10, p. 62). Bovendien zou Energy Transfer naar haar eigen stelling recht hebben op een verdrievubbeling van deze schadevergoeding (productie 10, p. 62), dus de ‘RICO’ schadeclaim was in totaal ten minste USD 900 miljoen (productie 10, p. 62 en 64). Kennelijk los daarvan (dit blijkt niet overduidelijk uit de vorderingen) zou Energy Transfer ook nog USD 300 miljoen aan schade hebben geleden door de beweerdelijke ‘defamation’ door GPI (productie 10, p. 70). Naast deze bedragen stelt Energy Transfer nog dat ook haar kosten, waaronder haar advocaatkosten, voor vergoeding in aanmerking komen. Advocaatkosten in de Verenigde Staten kunnen, zoals algemeen bekend, in vergelijking met advocaatkosten in Nederland torenhoog zijn.
48. Gezien de bizarre en ongefundeerde aard van de Federale Rechtszaak dienen GPI, GP Inc. en Greenpeace Fund een zogeheten ‘Motion to Dismiss for Failure to State a Claim’ in, waarin zij verzoeken de eisen zonder nadere inhoudelijke behandeling af te wijzen. Bij vonnis van 14 februari 2019 wijst de federale rechtbank dit verzoek toe, omdat aan de strenge eisen voor vroegtijdige afwijzing van de zaak is voldaan. Dit vonnis van 14 februari 2019 wordt overgelegd als **productie 11**.
49. In het vonnis maakt de rechter korte metten met de zaak van Energy Transfer. De rechter vat in p. 7-12 de klachten kort samen, “stripping away the hyperbole”, en constateert bij alle op de RICO Act gebaseerde klachten kort en krachtig dat deze kennelijk ongefundeerd zijn. Nu de vordering gebaseerd op het federale recht faalt, besluit de federale rechter af te zien van de uitoefening van rechtsmacht ten aanzien van de aanvullende vorderingen onder het recht van North Dakota. De Federale Rechtszaak tegen GPI c.s. is hiermee ten einde.
50. Helaas is dit echter niet het einde van de juridische campagne van Energy Transfer tegen GPI.

3.3 De Staatsrechtszaak: 2019-heden

51. Op 21 februari 2019, een week nadat de Federale Rechtszaak was gestrand, start Energy Transfer een tweede rechtszaak tegen GPI en anderen voor de Morton County District Court, en dus in ‘state court’. Aan deze zaak zal hierna worden gerefereerd als de “**Staatsrechtszaak**”. De ‘Complaint’ in deze zaak van 21 februari 2019 wordt overgelegd als **productie 12**. GPI is daarin de eerstgenoemde gedaagde: de andere gedaagden zijn GP Inc.,

Greenpeace Fund, Inc. en vier anderen. BankTrack en EnergyFirst! zijn geen gedaagden in de Staatsrechtszaak.

52. Gedurende de jaren heeft Energy Transfer haar eisen aangepast en verminderd. Zo heeft zij haar zaak jegens één gedaagden, een individuele werknemer van GP Inc., ingetrokken, en heeft zij de lijst met beweerdelijk onrechtmatige uitingen van de gedaagden in de Staatsrechtszaak significant ingekort, van 82 naar 9. Echter, Energy Transfer heeft haar zaak jegens GPI ten onrechte niet ingetrokken. Uit de zogeheten 'Second Amended Complaint' van Energy Transfer van 6 maart 2024 blijkt de huidige omvang van de Staatsrechtszaak. Dit stuk wordt overgelegd als **productie 13**.
53. Energy Transfer uit in de Second Amended Complaint (wederom) zeer ernstige beschuldigingen aan het adres van de gedaagden, inclusief GPI.¹⁸ Een greep uit de beschuldigingen (paginanummers verwijzen naar productie 13):
- a. GPI zou zich schuldig hebben gemaakt aan een "unlawful and violent scheme to cause financial harm to Energy Transfer and Dakota Access, to cause physical harm to their employees and infrastructure, and to disrupt and prevent the companies construction of the [DAPL]" (p. 1);
 - b. GPI zou "violent attacks against Plaintiff's employees and property" hebben gepleegd en zou zich schuldig hebben gemaakt aan "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" (p. 1-2);
 - c. GPI zou een "extremist agenda" hebben, die zij zou uitvoeren "through means far outside the bounds of democratic political action, protest and peaceful, legally protected expression of dissent", en zelfs door "militant direct action" waaronder "trespass", "unlawful invasion", "violent and destructive attacks", "arson" en "intimidation, harassment and assault of Plaintiffs' employees" (p. 2);
 - d. GPI zou de kwade genius zijn achter "large-scale, intentional dissemination of misinformation and outright falsehoods regarding both Energy Transfer and Dakota Access (...)" en "a defamatory campaign to interfere with and, indeed, destroy Energy Transfer and Dakota Access's relationships with investors, financiers, and other constituents" (p. 3);
 - e. De handelwijze van GPI kwalificeert volgens Energy Transfer niet als beschermde bijdrage aan het publieke debat, maar zou zijn "designed to inflict damage, cause delay, defame Energy Transfer and Dakota Access, and disrupt their operations as much as possible" (p. 5), en bovendien tot doel hebben "[to raise funds] to further their anti-DAPL agenda" (p. 11);
 - f. GPI zou zich schuldig hebben gemaakt aan (I) 'trespass to land and chattel'; (II) 'aiding and abetting trespass to land and chattel'; (III) 'conversion'; (IV) 'aiding and abetting

¹⁸ Dezelfde verwijten worden (grotendeels) gemaakt aan het adres van de andere Greenpeace-entiteiten die als gedaagden zijn betrokken, en deels aan het adres van BankTrack. BankTrack is geen partij in de Staatsrechtszaak. Dit onderstreept nog eens de ongerijmdheid van de zaak van Energy Transfer tegen GPI.

conversion'; (V) 'nuisance'; (VI) 'aiding and abetting nuisance'; (VII) 'defamation'; (VIII) 'tortious interference with business relations'; en (IX) 'civil conspiracy';

- g. Energy Transfer stelt zich nog altijd op het standpunt dat er een rechtsplicht bestaat op grond waarvan GPI en de andere Greenpeace-gedaagden haar ten minste USD 300 miljoen aan schadevergoeding zou moeten betalen. Energy Transfer komt tot dit astronomische bedrag door bizarre schadeposten op te voeren, zoals bijna \$100 miljoen omdat USACE de benodigde 'easement' later dan verwacht verstrekke. Energy Transfer heeft daarnaast aangegeven dat zij nog een nader te bepalen bedrag aan 'exemplary damages' zal eisen. Dergelijke 'damages' kunnen toegewezen worden wanneer er jegens de gedaagde sprake is van "clear and convincing evidence of oppression, fraud, or actual malice," en kunnen tot twee keer het aan schadevergoeding gevorderde bedrag kan zijn – dus USD 600 miljoen. Bovendien eist Energy Transfer vergoeding van haar volledige proceskosten, die naar schatting tientallen miljoenen dollars zullen bedragen, en rente over al deze posten.
54. Deze beschuldigingen zijn volstrekt ongegrond. GPI benadrukt nogmaals dat zij niets anders heeft gedaan dan – samen met meer dan 500 andere organisaties – een brief van BankTrack mede ondertekenen. Ook ten aanzien van de andere gedaagde Greenpeace-entiteiten zijn de beschuldigen van Energy Transfer overigens volstrekt ongegrond.
55. Zoals hiervoor is toegelicht grossiert Energy Transfer in haar Second Amended Complaint in breed en overdreven geformuleerde stellingen over GPI en de andere gedaagden. Zij laat daarna echter volledig na om specifieker uit te werken wat nu precies de respectievelijke rollen van GPI, de andere Greenpeace-entiteiten en niet gerelateerde derden zouden zijn geweest bij enig onrechtmatig handelen, en om een causaal verband met de beweerdelijke schade aan te tonen. Slechts op één punt werkt Energy Transfer haar stellingen verder uit, en dat is op het punt van de beweerdelijke onrechtmatige uitingen van GPI. De lijst van deze beweerdelijke onrechtmatige uitingen is gedurende het verloop van de Staatsrechtszaak door Energy Transfer als gezegd significant ingekort, en bevat nu nog twee uitingen die Energy Transfer linkt aan GPI. Deze zijn genoemd in de 'Second Amended Appendix A – Greenpeace False Statements' (**productie 14**).
56. Het gaat daarbij om twee zinnen uit de open brief van BankTrack van 30 november 2016, die overigens bevindingen uit een rapport van een expertlid van het Permanent Forum on Indigenous Issues van de Verenigde Naties herhalen. Bij de weergave daarvan door Energy Transfer valt meteen op dat in de categorie 'Author' het volgende staat: "Joint letter, signed by Banktrack; Greenpeace France; Greenpeace International; Greenpeace Netherlands; Greenpeace USA" (productie 14). Deze open brief van BankTrack, mede ondertekend door honderden andere organisaties, kwalificeert als een legitieme bijdrage aan een debat van publiek belang en is zonder meer een rechtmatige uitoefening van het recht op uitingsvrijheid van BankTrack en de mede-ondertekenaars als 'public watchdogs' (zie hierna). Het is bovendien opmerkelijk dat BankTrack, de hoofdauteur van de open brief, en de meer dan 500 mede-ondertekenaars niet (ook) in rechte zijn betrokken door Energy Transfer in de Staatsrechtszaak. Uit niets blijkt dat GPI – die ergens middenin de pagina's lange alfabetisch geordende lijst met mede-ondertekenaars wordt genoemd – een bijzondere verantwoordelijkheid zou toekomen door het mede ondertekenen van de open brief, die als gezegd sowieso volstrekt legitiem is. Hieruit blijkt duidelijk de bedoeling van Energy Transfer om specifiek GPI en het Greenpeace-netwerk schade toe te brengen door het aanspannen van de Staatsrechtszaak tegen (alleen) hen.

57. Na jaren 'discovery' heeft Energy Transfer nog niet een begin van bewijs kunnen leveren voor GPI's betrokkenheid bij de andere ernstige en grotendeels strafbare feiten waar Energy Transfer GPI van beschuldigt, zoals hiervoor toegelicht.¹⁹ Echter, GPI ziet zich al nu al zeven jaar gedwongen om zich te verdedigen tegen kennelijk ongegronde, onnodig complexe en slepende rechtszaken van Energy Transfer, waardoor zij grote schade lijdt en blijft lijden.
58. Met haar keuze de Staatsrechtszaak voor dit specifieke forum aan te spannen speelt Energy Transfer bovendien in op een aantal problemen die haar in staat stellen de ongefundeerde Staatsrechtszaak nog vele jaren te rekken.
59. Ten eerste heeft de staat North Dakota, in tegenstelling tot meer dan 30 andere staten in de Verenigde Staten, geen anti-SLAPP wetgeving. Daarmee kan GPI geen beroep doen op een krachtige vorm van bescherming die haar in ongeveer 60% van alle andere jurisdicties in de VS wel zou zijn toegekomen. North Dakota is daarom omschreven als "favorable terrain for these sorts of defamation lawsuits".²⁰
60. Een tweede groot probleem is dat het voor de rechterlijke macht in North Dakota moeilijk is een rechter te vinden die de zaak kan behandelen. Alle tien rechters in het district waar de Staatsrechtszaak aanhangig is gemaakt (het South Central Judicial District) verschoenen zich om voor GPI niet kenbare redenen van de behandeling van de zaak. Het Hooggerechtshof van North Dakota wijst daarop de zaak toe aan een rechter uit een ander district in North Dakota, maar deze rechter gaat in april 2022 met pensioen. Bij het opnieuw toebedelen van deze zaak verschoenen wederom alle rechters in de South Central Judicial District zich van de behandeling van deze zaak. Het Hooggerechtshof van North Dakota wijst daarop de rechter James Gion uit een ander district (de South Western Judicial District) aan om de zaak te behandelen. Dit doet hij vanaf augustus 2022.
61. Ten derde heeft Energy Transfer de Staatsrechtszaak aanhangig gemaakt bij de Morton County District Court. Morton County is een klein gebied met maar ongeveer 30.000 inwoners. De District Court aldaar is een kleine rechtbank met beperkte middelen om de zaak te behandelen. De werklust voor de rechters in de counties van North Dakota is ongekend hoog. Ter illustratie: de opperrechter (Chief Justice) van North Dakota lichtte recent in zijn "State of the Judiciary Address" toe dat "[o]ur district courts handle approximately 160,000 new filings and 20,000 reopened cases each year—180,000 cases. That is an incredible caseload for 55 district court judges and 53 clerk of court offices."²¹
62. Dit raakt aan een vierde probleem. De Staatsrechtszaak zal gehoord worden door een jury die uitsluitend uit inwoners van Morton County bestaat. De aanleg van de DAPL en de protesten tegen de DAPL hebben veel impact gehad op inwoners van Morton County, en er

¹⁹ Terzijde: ook de verwijten van Energy Transfer aan het adres van de andere gedaagden zijn evident ongegrond. Daar gaat de onderhavige zaak echter niet over.

²⁰ Texas Observer 25 maart 2022, "Kelcy Warren's Defamation Suit has Beto O'Rourke Spoiling For a Fight", <https://www.texasobserver.org/kelcy-warrens-defamation-suit-has-beto-orourke-spoiling-for-a-fight/>. Dit is overigens een artikel dat gaat over een SLAPP-zaak die door Kelcy Warren is aangespannen tegen de (in Amerika) bekende politicus Beto O'Rourke. De Texaanse rechter wees de eisen van Warren af en oordeelde dat O'Rourke's statements kwalificeerden als "non-actionable opinions". Zie: Court of Appeals Texas, Austin 9 juni 2023, nr. 03-22-00416-CV (Warren/Rourke), bevestigd door de Supreme Court of Texas.

²¹ Deze rede sprak North Dakota Chief Justice Jon Jensen uit op 7 januari 2025 en is hier terug te lezen: <https://www.ndcourts.gov/news/north-dakota/supreme-court/state-of-the-judiciary/2025-state-of-the-judiciary-address>.

bestaan nog steeds veel emoties onder hen over de gebeurtenissen. GPI heeft de rechtbank daarom verzocht de rechtszaak te verplaatsen naar een 'county' waar potentiële juryleden niet persoonlijk te maken hebben gehad met de protesten tegen de DAPL en het hardhandige optreden daartegen. Dit verzoek heeft de rechtbank echter tot nader order geweigerd.

63. Bovenop deze structurele problemen heeft Energy Transfer de zaak al vóór de inhoudelijke behandeling uitgebreid op weten te rekken, door het aanvoeren van talrijke evident ongegronde grondslagen waar GPI gedwongen is op te reageren (zie ook hierna). Het tijdrovende en kostbare proces van 'discovery' heeft jaren in beslag genomen, waarbij Energy Transfer keer op keer de hakken in het zand gezet heeft. Zij heeft zelfs tot aan het Hooggerechtshof van North Dakota doorgeprocedeerd in een vergeefse poging om onder openbaarmaking van documenten over haar staat van dienst met betrekking tot de veiligheid van haar pijpleidingen uit te komen, en om te voorkomen dat Kelcy Warren een 'deposition' (beëdigde getuigenverklaring) zou moeten afleggen. Er staan meer dan 3.000 proceshandelingen op de rol van de rechtbank, en de zaak is omschreven als de grootste civiele zaak die ooit in North Dakota heeft plaatsgevonden. Er hebben 110 getuigenissen plaatsgevonden en er zijn miljoenen pagina's aan informatie uitgewisseld in de 'discovery' fase. De kosten voor GPI zijn torenhoog en blijven elke dag toenemen.
64. De gedaagde Greenpeace-entiteiten hebben na aanvang van de Staatsrechtszaak wederom een 'motion to dismiss' ingediend om de zaak vroegtijdig te beëindigen. Rechter Marquart (een andere rechter dan de huidige behandelende rechter) wees dit verzoek in een kort vonnis af. Dit vonnis weerspiegelt een algemene, zwaarwegende voorkeur in de VS om eisers bij de beoordeling van een 'motion to dismiss' het voordeel van de twijfel te geven.
65. Naar aanleiding van de laatste versie van de eisen van Energy Transfer in de Second Amended Complaint heeft GPI op 8 april 2024, na het voltooien van 'discovery', een zogeheten 'Motion for Summary Judgment on All Counts' ingediend. Een dergelijke motie is, kort gezegd, een verzoek aan de rechter om de zaak te beslissen zonder 'trial', omdat de relevante feiten tussen de partijen voldoende vaststaan, en toepassing van het recht daarop maar tot één resultaat kan leiden. Dit processtuk wordt overgelegd als **productie 15**.²² Hierin vraagt GPI de rechtbank van Morton County om alle vorderingen van Energy Transfer tegen haar af te wijzen, nu er geen grondslag voor deze vorderingen is. In de motie stelt GPI vast dat de volgende feiten zijn komen vast te staan in de procedure en niet betwist worden:
 - a. GPI, GP Inc. en Greenpeace Fund, Inc. zijn afzonderlijke entiteiten. Er moet dus een afzonderlijk verwijt gemaakt kunnen worden aan GPI;
 - b. GPI was niet betrokken bij de "on-the-ground activities" tijdens de protesten tegen de DAPL in North Dakota;
 - c. De enige activiteit die GPI heeft ontplooid in het kader van de protesten tegen de DAPL is het mede ondertekenen van de open brief van BankTrack;
 - d. Energy Transfer heeft, ondanks het jarenlange 'discovery' proces, geen enkel bewijs kunnen overleggen van een causaal verband tussen de (beweerdelijke) door haar geleden schade en enig handelen van GPI.

²² Enkele delen van dit stuk zijn onleesbaar gemaakt in verband met bijzonderheden van het Amerikaanse procesrecht. Dit doet niets af aan de betekenis van de overige delen van het stuk.

66. GPI werkt vervolgens in de motie per gestelde vorm van onrechtmatig handelen (trespass, conversion, nuisance enzovoorts) specifiek uit waarom niet is voldaan aan zelfs maar de basisvereisten voor het stellen en bewijzen van deze feiten door Energy Transfer (productie 15, p. 8-19). Ook toont GPI aan dat niet is voldaan aan de hoge drempel die geldt voor toewijzing van de door Energy Transfer geëiste 'exemplary damages', waarvoor "clear and convincing evidence of oppression, fraud or actual malice" dient te zijn – er is echter nog geen begin van bewijs van dergelijk handelen door GPI (p. 19-21). GPI verzoekt dan ook om afwijzing van alle eisen jegens haar middels 'summary judgment'.
67. De rechtbank heeft dit verzoek tien maanden na indiening nog niet behandeld, en het is GPI niet duidelijk of dit überhaupt nog zal gebeuren (er is in elk geval geen datum voor bekend). Ondanks het volledige gebrek aan grondslag voor haar zaak tegen GPI zet Energy Transfer ondertussen de Staatsrechtszaak tegen GPI door. De inhoudelijke 'jury trial' in de Staatsrechtszaak zal naar verwachting op of rond 24 februari 2025 van start gaan, wat tot verdere schade zal leiden voor GPI.

3.4 Uitingen Energy Transfer over GPI en de Rechtszaken

68. GP Inc. heeft in een publicatie over de zaak de motivering van Energy Transfer voor het doorzetten van de Staatsrechtszaak, ook nadat de Federale Rechtszaak al bij de eerste horde sneuvelde, treffend geschetst als volgt:²³

"When it comes to SLAPP suits like this one, the process itself is the punishment. The burden of time and money to defend constitutionally protected activities from such mischaracterizations is far too high for ordinary citizens and community organizations. As a result, many will decide to keep quiet rather than risk a ruinous judgment."

69. Energy Transfer heeft door haar publieke uitingen bevestigd dat haar doel met de rechtszaken tegen GPI en de andere gedaagden is om hen het zwijgen op te leggen, zoals hierna toegelicht zal worden. Naast het aanspannen van de Federale Rechtszaak en de Staatsrechtszaak tegen GPI heeft Energy Transfer telkens een breed opgezette mediastrategie uitgevoerd. Zij communiceert regelmatig over de zaak en haar eerdere uitingen in dit verband zijn nog steeds voor iedereen online beschikbaar en vindbaar.
70. Tegelijkertijd met het starten van de Federale Rechtszaak publiceert Energy Transfer een artikel over GPI en de andere gedaagden getiteld "Energy Transfer Files Federal Lawsuit Against Greenpeace International, Greenpeace Inc., Greenpeace Fund, Inc., BankTrack And Earth First! For Violation Of Federal And State Racketeering Statutes". Dit artikel wordt overgelegd als **productie 16**.

Het artikel is nog steeds wereldwijd online beschikbaar en vindbaar met behulp van zoekmachines als Google via de url:

<https://ir.energytransfer.com/news-releases/news-release-details/energy-transfer-files-federal-lawsuit-against-greenpeace/>

²³ Greenpeace Inc. 6 June 2024, "The Story of Energy Transfer's \$300 Million Lawsuit, and Why It Matters", <https://www.greenpeace.org/usa/energy-transfer-lawsuit-story/>.

71. In dit artikel noemt Energy Transfer GPI een “rogue environmental group” die onderdeel uit zou maken van een “Enterprise [which] incited, funded, and facilitated crimes and acts of terrorism”. Energy Transfer beschuldigt GPI onder meer van “employ[ing] a pattern of criminal activity and a campaign of misinformation for purposes of increasing donations and advancing their political or business agendas”. Ook zouden GPI en de andere gedaagden verantwoordelijk zijn voor een “misinformation campaign” waarin gebruik zou zijn gemaakt van “manufactured evidence”. Met andere woorden: GPI zou niet terugdeinzen voor het bewust misleiden het algemene publiek met nep-bewijs.
72. Volgens Energy Transfer zou verder aan de orde zijn dat GPI “directly and indirectly funded eco-terrorists on the ground in North Dakota” met als doel “[to] further the Enterprise’s corrupt agenda by inducing and directing violent and destructive attacks against law enforcement as well as Plaintiffs’ property and personnel”. GPI zou ook betrokken zijn bij “persistent attempted cyber-attacks and telephonic and electronic threats to the physical safety of executives”.
73. Zo misbruikt Energy Transfer de Federale Rechtszaak als aanleiding om dezelfde ernstige en niet-onderbouwde beschuldigingen van strafbaar, niet integer en onrechtmatig handelen in de openbaarheid te brengen. Deze beschuldigingen raken de kern van de integriteit en reputatie van GPI. Als gezegd: GPI heeft slechts haar handtekening gezet, samen met meer dan 500 andere organisaties, onder een open brief van BankTrack. De Federale Rechtszaak, waarin deze ongefundeerde beschuldigingen verpakt als federale RICO-claim aan een rechter zijn voorgelegd, is zoals toegelicht na een ‘motion to dismiss’ vroegtijdig afgewezen.
74. Bij het starten van de Federale Rechtszaak heeft Energy Transfer, bij monde van haar huidige Executive Chairman en toenmalige CEO Kelcy Warren, een inkijk gegeven in haar beweegredenen voor het starten van rechtszaken tegen de Greenpeace-entiteiten. Warren is de oprichter en voormalig CEO van Energy Transfer, LP, en als zodanig de meest prominente stem van Energy Transfer in het publieke debat. Hij behoort tot de 500 rijkste mensen ter wereld, met een geschat persoonlijk fortuin van tussen de 6 en 7 miljard dollar.²⁴
75. Op 25 augustus 2017 verschijnt Kelcy Warren op de televisiezender CNBC (op dat moment als CEO van Energy Transfer) voor een interview over de Federale Rechtszaak. Hoewel er ook andere gedaagden in de Federale Rechtszaak waren luidt de titel van het interview: “ENERGY TRANSFER SUES GREENPEACE”.
76. Tijdens het interview verwijst Warren naar Greenpeace en andere ‘public watchdogs’ als “these people” en zegt over hen: “I am not afraid of these people at all”. Een transcriptie van dit interview wordt overgelegd als **productie 17**. Warren maakt verder duidelijk dat Energy Transfer met het starten van rechtszaken tegen de gedaagde Greenpeace-entiteiten tot doel heeft om hen te laten ‘boeten’ voor hun werk:

“Everybody’s afraid of these environmental groups and the fear that it may look wrong if you fight back (...) but what they did to us is wrong, and they’re going to pay for it [...] They’re going to pay for this, they’re going to pay for this”.

²⁴ Begin juni 2024 ziet Bloomberg Warren de 399e rijkste persoon ter wereld; Forbes merkt hem aan als de 483e rijkste persoon ter wereld.

77. Warren zegt expliciet “this can’t be allowed to happen” en zegt “They’re doing this elsewhere in the country, same cast of characters, and somebody’s gotta stand up and we-we chose to do that”. Daarmee signaleert hij volgens GPI duidelijk dat hij wil dat de rechtszaak een voorbeeldfunctie heeft voor alle ‘environmental groups’ en andere partijen die deelnemen aan het publieke debat.
78. Een maand later (september 2017) verschijnt Warren voor een interview met Chris Berg bij Valley News Live. In dit interview is Warren nog duidelijker over de bedoelingen van Energy Transfer. Hij zegt dat Energy Transfer de Federale Rechtszaak heeft aangespannen ‘[to] send a message’, en niet primair om schadevergoeding te krijgen:²⁵
- “We’ve created this kind of tolerance where, oh my gosh, you can’t challenge these people in fear that someone is going to say you’re not a friend of the environment. That’s nonsense. [...] 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.”
79. De boodschap is dus: “You can’t do this”, en de bedoeling van Energy Transfer is om een einde te maken aan alle activiteiten van organisaties als GPI. Dat bevestigt Warren later in dit interview, als Berg aan Warren vraagt: “are you trying to cease funding for organisations like Greenpeace?”. Warren antwoordt daarop: “Absolutely”.
80. Hij bevestigt verder dat het aanvullende doel van de Rechtszaken is om GPI (en de andere Greenpeace-organisaties) op ‘non-monetary’ wijze te doen boeten voor haar deelname aan het publieke debat: “whether that paying is-is more monetary or whether that paying is uh, ‘you gotta cease this stuff, people, you can’t keep conducting yourself this way’.”
81. Een transcriptie van dit interview wordt overgelegd als **productie 18**.
82. Energy Transfer laat zich dan ook continu negatief uit over GPI (en de andere Greenpeace entiteiten) en staat in haar publieke uitingen nog steeds achter de door haar geuite beschuldigingen over GPI. Zij heeft verschillende websites waar zij uitingen over GPI op plaatst, zoals de website “Energy Transfer Facts” en de website “DAPL Pipeline Facts”. Op 9 september 2024 heeft Energy Transfer op de eerstgenoemde website GPI nogmaals beschuldigd van “illegal actions” en “breaking the law” en aangegeven dat zij achter haar eerder geuite beschuldigingen jegens GPI staat (**productie 19**).
83. Energy Transfer heeft zelfs twee speciale websites opgezet die gewijd zijn aan de zaak tegen Greenpeace. De eerste website is getiteld “GREENPEACE LAWSUIT: THE FACTS ABOUT ENERGY TRANSFER PARTNERS VS. GREENPEACE”, en is permanent beschikbaar en vindbaar via de url <https://greenpeaceetplawsuit.com/>. Screenshots van deze website worden overgelegd als **productie 20**. Deze website bevat onder meer de hiervoor toegelichte ongefundeerde beschuldigingen aan het adres van onder meer GPI, die in dit kader als “FACTS” gepresenteerd worden. De tweede website, die zeer recent is gelanceerd, is getiteld “TAKE BACK THE TRUTH”. Screenshots van deze website worden overgelegd als **productie**

²⁵ De uitzending is nog steeds online terug te kijken: Valley News Live 1 september 2017, " Energy Transfer Partners CEO, Kelcy Warren, says DAPL was about a money raise", <https://www.valleynewslive.com/content/misc/Energy-Transfer-Partners-CEO-Kelcy-Warren-says-DAPL-was-about-a-money-raise-442409553.html>.

21. De beweerdelijke 'truth' die hier gepresenteerd wordt omvat ongefundeerde beweringen als: "Fact: Greenpeace organized, funded and supported illegal acts of trespass, property damage and violence" en "Fact: Greenpeace targeted Energy Transfer's business constituents with misinformation".

84. Ook op sociale media blijft Energy Transfer zich uitlaten over de Rechtszaken. In september 2024 publiceert Energy Transfer een tweet met een link naar een artikel over de lopende rechtszaak, waarin het risico wordt belicht dat Greenpeace US als gevolg van de rechtszaken van Energy Transfer failliet zou kunnen gaan. Dit noemt Energy Transfer een 'wonderful story' (**productie 22**, p. 1). In een andere tweet linkt Energy Transfer naar een artikel waarin Greenpeace wordt gekwalificeerd als 'spoiled brats' en in weer een andere tweet linkt Energy Transfer naar een artikel over de Rechtszaken met de titel: "A lawsuit may end the heyday of destructive environmental activism" (productie 22, p. 2 en 3). Het account Dakota Access Pipeline (@DAPLFacts) plaatst op 7 februari 2025 een tweet met de tekst: "Many fervent activists are losing touch with the fact that free speech is not a license for violence, harassment and vandalism. #EnergyTransfer vs. #Greenpeace." (productie 22, p. 4).

3.5 Procesverloop

85. Op 23 juli 2024 heeft de raadsman van GPI een brief gestuurd aan elk van de gedaagden waarin gedaagden namens GPI gedaagden aansprakelijk gesteld worden voor de schade die GPI heeft geleden en nog steeds lijdt als gevolg van hun onrechtmatig handelen, bestaande uit het aanspannen van SLAPPs en handelingen in dat kader, waaronder het doen van onjuiste uitingen over GPI (zoals hierboven onder par. 3.4 besproken). Deze brieven worden overgelegd als **productie 23**. GPI sommeert gedaagden om de Staatsrechtszaak in te trekken en aansprakelijkheid te aanvaarden.
86. Op 6 september 2024 reageren gedaagden gezamenlijk op deze brief via hun raadsman Trey Cox van het Amerikaanse advocatenkantoor Gibson Dunn & Crutcher (**productie 24**). In deze brief betwist Energy Transfer dat haar handelwijze, waaronder begrepen het aanspannen van de Staatsrechtszaak en de Federale Rechtszaak, als SLAPP zou kwalificeren. Energy Transfer voert aan dat zij met recht de Rechtszaken tegen GPI zou hebben aangespannen, nu GPI zich schuldig zou hebben gemaakt aan "illegal actions" en "breaking the law". Zij laat echter (wederom) na te specificeren waar dit onrechtmatige handelen nu precies uit bestaan zou hebben.
87. Tot slot stelt Energy Transfer dat "no existing Dutch or European laws referred to in the Letter can result in any form of liability of Energy Transfer, a U.S.-based company". Zoals in deze dagvaarding nader wordt toegelicht is dit standpunt onjuist, zowel in zijn algemeenheid als in dit specifieke geval.
88. Op 19 november 2024 reageert GPI via haar raadsman op dit schrijven van Energy Transfer (**productie 25**) en wijst er op dat op grond van onder meer de anti-SLAPP Richtlijn (hierna te bespreken) en het Nederlandse recht ruim voldoende basis bestaat voor juridische actie in Nederland tegen Energy Transfer. In een korte reactie op 4 december 2024 stelt Energy Transfer dat na 'careful consideration' van de door GPI aangevoerde wetgeving zij bij haar eerder ingenomen positie blijft en niet zal voldoen aan de sommatie van GPI (**productie 26**).
89. GPI ziet zich daarom genoodzaakt om deze zaak aan de Rechtbank voor te leggen.

4 JURIDISCH KADER

90. Op grond van art. 6:162 lid 1 en 2 BW verbiedt het Nederlands burgerlijk recht onrechtmatig handelen, waaronder wordt verstaan een inbreuk op een recht en een doen of nalaten in strijd met een wettelijke plicht of met hetgeen volgens ongeschreven recht in het maatschappelijk verkeer betaamt.²⁶
91. De relevante wettelijke plichten in dit verband zijn onder meer verschillende grondrechtelijke normen, zoals GPI hierna zal toelichten (par. 4.1). De zorgvuldigheidsnorm wordt in deze zaak verder ingevuld door *soft law* over SLAPPs (par. 4.2). Verder bieden Unierechtelijke normen, waaronder in elk geval de EU-Richtlijn die gericht is op het bieden van bescherming tegen SLAPPs, zowel binnen als buiten de EU, zowel een zelfstandige grondslag voor toewijzing van de vorderingen als een nadere invulling van de zorgvuldigheidsnorm (par. 4.3).
92. Daarnaast verbiedt het Nederlands burgerlijk recht partijen om misbruik te maken van hun recht, waaronder (maar niet beperkt tot) het uitoefenen van een recht met als enig doel een andere partij te schaden of wanneer men, in aanmerking nemende de onevenredigheid tussen het belang bij de uitoefening van een bevoegdheid en het belang dat daardoor wordt geschaad, naar redelijkheid niet tot die uitoefening had kunnen komen (artikel 3:13 lid 2 BW).

4.1 Grondrechtelijke normen

93. Op grond van onder meer art. 10 EVRM komt GPI het recht op vrijheid van meningsuiting toe. Blijkens de formulering van art. 10 lid 1 EVRM omvat dit recht ook het recht om informatie te verstrekken en het recht van het publiek om informatie te ontvangen. Volgens vaste rechtspraak van het EHRM volgt uit art. 10 EVRM bovendien een positieve verplichting voor de Staat om deze rechten te verzekeren voor zijn ingezetenen.²⁷ Op grond van onder meer art. 8 EVRM heeft GPI verder het recht op bescherming van haar reputatie.²⁸ Art. 8 EVRM legt positieve verplichtingen op aan de Staat om de onder dit artikel beschermde rechten te verzekeren, ook in horizontale verhoudingen.²⁹
94. Deze rechten volgen tevens uit andere normen van internationaal recht, zoals art. 17 en 19 van het Internationaal Verdrag inzake Burgerlijke en Politieke Rechten ("IVBPR") en, in de context van het Unierecht art. 7 en art. 11 van het Handvest van de Grondrechten van de Europese Unie (het "**Handvest**").

²⁶ In par. 6.3 van deze dagvaarding zal GPI nader toelichten dat het Nederlandse recht van toepassing is op deze zaak.

²⁷ Zie bijvoorbeeld recent EHRM 17 december 2024, nrs. 32678/18, 17172/20 en 30564/21 (*Side by Side International Film Festival et al./Rusland*), r.o. 13: "The Court reiterates the key importance of freedom of expression as one of the preconditions for a functioning democracy. Genuine, "effective" exercise of this freedom does not depend merely on the State's duty not to interfere, but may require positive measures of protection."

²⁸ EHRM 16 februari 2016, nr. 8895/10 (*Ärtzammer Für Wien en Dorner/Oostenrijk*), r.o. 62.

²⁹ EHRM 1 maart 2022, nr. 35582/15 (*I.V.T./Roemenië*), r.o. 45:

"The Court reiterates that while the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference. In addition to this negative undertaking, there may be positive obligations inherent in effective respect for private and family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of relations of individuals between themselves."

95. In het kader van SLAPPs is verder telkens van belang dat uit verschillende internationale normen, waaronder art. 6 EVRM, volgt dat partijen in beginsel recht hebben op toegang tot een rechter. Tegelijkertijd geldt op grond van art. 17 EVRM dat partijen aan het EVRM geen rechten kunnen ontnemen (en daar dus ook geen beroep op kunnen doen) als hun handelwijze gericht is op “destroying any of the rights and freedoms set forth in the Convention; therefore, no person may be able to take advantage of the provisions of the Convention to perform acts aimed at destroying the aforesaid rights and freedoms”.³⁰

4.2 Internationale ‘soft law’ rechtsbronnen

96. Ten aanzien van SLAPPs zijn er verschillende internationale ‘soft law’ rechtsbronnen waaraan gewicht toekomt bij de interpretatie van de in deze zaak toepasselijke juridisch direct verbindende rechtsnormen. GPI zal deze hierna schetsen.
97. Er bestaan in internationaal verband al geruime tijd zorgen over het misbruik van het recht op toegang tot een rechter om kritische stemmen de mond te snoeren, en zo het maatschappelijke debat over belangrijke onderwerpen te beperken. Zo uit het Comité van Ministers van de Raad van Europa in 2012, nog vóór het gebruik van de term ‘SLAPPs’ gemeengoed was in Europa, zijn zorgen over het (ten onrechte) inzetten van rechtszaken als vorm van intimidatie of als manier om gerechtvaardigde kritiek over onderwerpen van publiek belang te smoren. In het bijzonder wijst het Comité van Ministers op het fenomeen ‘libel tourism’, dat het omschrijft als:

“[a] form of forum shopping when a complainant files a complaint with the court thought most likely to provide a favourable judgment (including in default cases) and where it is easy to sue. In some cases a jurisdiction is chosen by a complainant because the legal fees of the applicant are contingent on the outcome (“no win, no fee”) and/or because the mere cost of the procedure could have a dissuasive effect on the defendant. The risk of forum shopping in cases of defamation has been exacerbated as a consequence of increased globalisation and the persistent accessibility of content and archives on the Internet (...)

In some cases libel tourism may be seen as the attempt to intimidate and silence critical or investigative media purely on the basis of the financial strength of the complainant (“inequality of arms”). In other cases the very existence of small media providers has been affected by the deliberate use of disproportionate damages by claimants through libel tourism.”

98. Het Comité van Ministers onderstreept dat dit ‘libel tourism’ – wat een element van een SLAPP kan zijn – een inbreuk is op het recht van vrijheid van meningsuiting, waaronder het recht om informatie te delen en het recht van het publiek om informatie te ontvangen. Ook wijst het Comité van Ministers op vaste rechtspraak van het EHRM waaruit volgt dat de toewijzing van een disproportionele schadevergoeding in uitingszaken een inbreuk op de door art. 10 EVRM beschermde rechten is.

Deze vaste lijn in de rechtspraak van het EHRM is bijvoorbeeld in 2017 nog eens bevestigd in het *Independent Newspapers*-arrest. Daarin oordeelt het EHRM dat een door een Ierse jury

³⁰ EHRM 27 juni 2023, nr. 47833/20 (*Lenis/Griekenland*), r.o. 38 en verwijzingen aldaar.

toegewezen schadevergoeding van EUR 1.25 miljoen tegen een Ierse krant disproportioneel en in strijd met artikel 10 EVRM was, onder meer overwegend:³¹

“As the Court has indicated previously, it is not necessary to rule on whether the impugned damages’ award had, as a matter of fact, a chilling effect on the press. As a matter of principle, unpredictably large damages’ awards in libel cases are considered capable of having such an effect and therefore require the most careful scrutiny. (...)”

Where, as in this case, there is a shortcoming in the operation of the safeguard at first instance, a defendant may have little option but to bring an appeal against the level of damages awarded, since only through appellate scrutiny can it be assured that the amount bears a reasonable relationship of proportionality to the harm suffered by the plaintiff. The Court notes that this may entail both considerable costs and inevitable delay before the decision is given, a fact emphasized by other defamation cases both concluded and pending (...)

unpredictably high damages in libel cases are considered capable of having a chilling effect and they therefore require the most careful scrutiny and very strong justification.”

99. In deze casus staat overigens het oordeel van de nationale rechter dat de publicatie waar de zaak om draaide onrechtmatig was niet ter discussie: het gaat puur om de hoogte van de toegewezen schadevergoeding. In zoverre is dit arrest geen duidelijk voorbeeld van een SLAPP-zaak. Wel laat het duidelijk zien dat een opmerkelijk hoge (eis tot) schadevergoeding vrijwel altijd in strijd zal zijn met art. 10 EVRM.
100. Een duidelijk voorbeeld van wat tegenwoordig als SLAPP-zaak gekwalificeerd zou worden is de zaak *Steel & Morris* bij het EHRM, waarin twee privé-personen in het Verenigd Koninkrijk tot het betalen van hoge schadevergoedingen veroordeeld waren op vordering van McDonalds en anderen, vanwege het verspreiden van kritische pamfletten. Het EHRM achtte toewijzing van deze hoge schadevergoeding disproportioneel en in strijd met art. 10 EVRM, onder meer nu McDonalds als machtig bedrijf niet had kunnen aantonen dat zij feitelijk enige schade had geleden door verspreiding van een beperkt aantal pamfletten.³²
101. Op 16 oktober 2017 wordt op Malta de onderzoeksjournaliste Daphne Caruana Galizia vermoord met een autobom. Op dat moment lopen er naar aanleiding van haar gedegen berichtgeving in het publieke belang over onder meer corruptie ongeveer 50 rechtszaken tegen haar, zowel binnen als buiten Malta, en waaronder in elk geval één zaak in de Verenigde Staten (Arizona), waar maar liefst USD 40 miljoen schadevergoeding van haar werd geëist.³³ Deze gebeurtenissen leiden wereldwijd tot ophef en onderstrepen dat SLAPPs ook in de EU een groot probleem zijn. Er komt in de jaren daarna meer en meer aandacht

³¹ EHRM 15 juni 2017, nr. 28199/15 (*Independent Newspapers/Ierland*), r.o. 85, 102 en 104.

³² EHRM 15 februari 2005, nr. 68416/01 (*Steel & Morris/Verenigd Koninkrijk*), r.o. 85-98.

³³ P. Milewska 15 juni 2023, ‘SLAPP’s, Daphne’s Law, and the Future of Journalism’, *Verfassungsblog*.

Zie ook: Daphne Caruana Galizia Foundation, ‘Defence against frivolous and vexatious libel suits’,

<https://www.daphne.foundation/en/justice/vexatious-libel-cases>;

“In May 2017, Ali Sadr Hasheminejad, owner and chairman of Pilatus Bank, sued Daphne in an Arizona court in his and Pilatus Bank’s name. The claim was for US\$40,000,000 in damages.”

voor SLAPPs tegen in de EU gevestigde partijen die gebruik maken van hun recht op uitingsvrijheid.

102. De toenmalige Commissaris voor Mensenrechten van de Raad van Europa Dunja Mijatović publiceert in oktober 2020 een 'Comment' getiteld "Time to take action against SLAPPs" (**productie 27**). Op basis van verschillende onderzoeken stelt de Commissaris vast dat het probleem van SLAPPs in Europa aan het verergeren is en dat "journalists, activists and advocacy groups" vooral het doelwit zijn van dergelijke rechtszaken. Zij wijst naast de zaak van Daphne Caruana Galizia op verschillende andere voorbeelden en onderstreept dat dit slechts enkele voorbeelden zijn van SLAPPs die op dat moment spelen.
103. Daarbij benadrukt de Commissaris dat het probleem alle 'public watchdogs' treft: "Public watchdogs in general are affected. Activists, NGOs, academics, human rights defenders, indeed all those who speak out in the public interest and hold the powerful to account might be targeted."
104. Op grond van vaste rechtspraak van het EHRM kwalificeren NGO's als GPI (net als media) als 'public watchdogs' die aanspraak kunnen maken op een hoog niveau van bescherming van hun rechten onder art. 10 EVRM.³⁴ Dat geldt in het bijzonder wanneer NGO's aandacht vragen voor kwesties van publiek belang. Het EHRM heeft NGO's erkend als partijen die een "important contribution to the discussion of public affairs" maken, en het goede functioneren van het maatschappelijk middenveld heeft volgens het EHRM dan ook "significant impact on the proper functioning of a democratic society".³⁵ In zaken die draaien om de uitingsvrijheid van NGO's is de beoordelingsvrijheid van de Staat dus beperkt en zal het EHRM elke ingreep 'scrupulously' beoordelen op noodzaak en proportionaliteit, en de toepassing van eventuele positieve verplichtingen van de Staat ook kritisch beoordelen.³⁶
105. De Commissaris omschrijft enkele veel voorkomende kenmerken van SLAPPs (onderstreping: advocaat):

"SLAPPs are typically disguised as civil or criminal claims such as defamation or libel and have several common features.

First, they are purely vexatious in nature. The aim is not to win the case but to divert time and energy, as a tactic to stifle legitimate criticism. Litigants are usually more interested in the litigation process itself than the outcome of the case. The aim of

³⁴ Zoals onder meer vastgesteld in dit standaardarrest: EHRM 22 april 2012, nr. 48876/08 (*Animal Defenders International/Verenigd Koninkrijk*), r.o. 103. Zie ook Commission Recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"), 27 april 2022, SWD(2022) 117 final, par. 7:

"Human rights defenders also play an important role in European democracies, especially in upholding fundamental rights, democratic values, social inclusion, environmental protection and the rule of law. They should be able to participate actively in public life and make their voices heard on policy matters and in decisionmaking processes without fear of intimidation. Human rights defenders refer to individuals or organisations engaged in defending fundamental rights and a variety of other rights, including environmental and climate rights, women's rights, LGBTIQ rights, the rights of the people with a minority racial or ethnic background, labour rights or religious freedoms."

³⁵ EHRM 8 november 2016, nr. 18030/11 (*Magyar Helsinki Bizottság/Hongarije*), r.o. 166-167.

³⁶ *Animal Defenders International*, r.o. 102 en 103.

distracting or intimidating is often achieved by rendering the legal proceedings expensive and time-consuming. Demands for damages are often exaggerated.

Another common quality of a SLAPP is the power imbalance between the plaintiff and the defendant. Private companies or powerful people usually target individuals, alongside the organisations they belong to or work for, as an attempt to intimidate and silence critical voices, based purely on the financial strength of the complainant.

It should be no surprise that SLAPPs are multiplying in areas such as environmental and consumer protection, crime prevention or corruption allegations. A typical example is when a large company sues journalists or activists who have exposed an environmental disaster.”

106. De Commissaris roept op tot het ontwerpen van een ‘comprehensive response’ tegen SLAPPs. Daarbij onderstreept de Commissaris het grote belang van het tegengaan van SLAPPs voor niet alleen de ruimte voor het publieke debat, maar voor het behoud van de democratische samenleving als geheel:

“While this practice primarily affects the right to freedom of expression, it also has a dramatic impact on public interest activities more broadly: it discourages the exercise of other fundamental freedoms such as the right to freedom of assembly and association and undermines the work of human rights defenders.”

107. Deze Comment vindt navolging in de ontwikkeling van wet- en regelgeving tegen SLAPPs, zoals hierna toegelicht zal worden. Ook speelt de Comment een belangrijke rol in de eerste uitspraak van het EHRM waarin SLAPPs genoemd zijn, het *OOO Memo/Rusland*-arrest. Voor zover relevant ziet het EHRM de Comment als bewijs voor “the growing awareness of the risks that court proceedings instituted with a view to limiting public participation bring for democracy, as highlighted by the Council of Europe Commissioner for Human Rights”.³⁷

108. Deze dreiging is wereldwijd erkend. In 2021 publiceert de toenmalige Special Rapporteur on freedom of peaceful assembly and of association, Annalisa Ciampi, een notitie over SLAPPs waarin zij “a significant increase worldwide” van SLAPPs signaleert (**productie 28**). Zij vat veel voorkomende kenmerken van een SLAPP als volgt samen:

“[the term SLAPP] generally refers to a civil lawsuit filed by a corporation against non-government individuals or organizations (NGOs) on a substantive issue of some political interest or social significance. SLAPPs aim to shut down critical speech by intimidating critics into silence and draining their resources. In the process, they distract and deflect discussions on corporate social responsibility, and – by masquerading as ordinary civil lawsuits – convert matters of public interest into technical private law disputes.

Often based upon ambiguous and elastic provisions of law, SLAPPs use a range of tactics to exhaust resources, campaign capacity and morale:

³⁷ EHRM 15 maart 2022, nr. 2840/10 (*OOO Memo/Rusland*), r.o. 23.

- ☐ They resort to motions, injunctions and other procedurally onerous processes (particularly the expensive and resource-intensive discovery/disclosure process) to impose heavy burdens on activists and civil society organizations;
- ☐ They often target individual campaigners, as well as the organizations they work for, to maximize the SLAPP's capacity to intimidate.

They generally include exorbitant claims for damages and allegations designed to smear, harass and overwhelm the campaigners.

SLAPPs threaten advocacy activities and therefore undermine the ability of civil society actors to effectively exercise their rights to freedom of expression, of assembly and of association."

109. Deze omschrijving sluit aan bij eerdere gezaghebbende omschrijvingen van wat een SLAPP kan zijn.³⁸ Er bestaat dus al in 2021 een zekere mate van consensus over de elementen waaruit kan volgen dat een rechtszaak (of rechtszaken) SLAPP(s) zijn. De Special Rapporteur uit daarbij haar zorgen over de ontwikkelingen rondom SLAPPs in de Verenigde Staten:

"The SLAPP trend has been particularly pronounced in the US, fueled and aided by exorbitant legal fees, the "American rule" of costs apportionment (whereby each party to a lawsuit is responsible for its own attorney fees), and an absence of caps on damages. In a recent report, the free speech group Index on Censorship identified civil litigation as one of a number of growing threats to US press freedom. (...) A worrying new approach has been the use of the Racketeering Influenced and Corrupt Organizations Act (RICO) to intimidate advocacy groups and activists by enabling corporations to smear these groups as "criminal enterprises", while claiming exorbitant damages (RICO entitles plaintiffs to claim treble damages as a punitive measure) for the "harm" they claim to have suffered."

110. De Special Rapporteur wijst er op de toename van SLAPPs temeer onacceptabel is nu op bedrijven internationaalrechtelijke verplichtingen rusten, zowel direct als indirect (bijvoorbeeld de UN Guiding Principles) om mensenrechten te respecteren. Gezien het primaat van internationaal recht constateert de Special Rapporteur dat bedrijven door het aanspannen van SLAPPs hoe dan ook onrechtmatig handelen, ongeacht de rechtmatigheid onder intern/nationaal recht:

"It is a well established principle of international law that the characterization of an act as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law. The obligations of corporations under international law, therefore,

³⁸ En ook bij andere documenten en resoluties van de VN, onder meer VN-Mensenrechtenraad, Resolution on the safety of journalists, 6 oktober 2022, A/HRC/RES/51/9, <https://digitallibrary.un.org/record/3992428>, met een oproep aan VN-staten om maatregelen te nemen tegen SLAPPs gezien de ernst van "the rise of strategic lawsuits against public participation, including by business entities, to exercise pressure, intimidate or exhaust the resources and morale of journalists, and the-reby stop them from performing their work, including on matters of public interest" (deze bescherming komt als gezegd ook toe aan andere 'public watchdogs').

prevail over all national laws and regulations, including those protecting human rights.”

111. Binnen de Europese Unie gaan er na de moord op Daphne Caruana Galizia vele stemmen op om bindende Uniewetgeving op te stellen die journalisten, activisten, NGOs en andere ‘public watchdogs’ betere bescherming kan bieden tegen SLAPPs. Talrijke partijen verenigen zich daarop in de brede ‘Coalition Against SLAPPs in Europe’ (“**CASE**”). Mede geïnspireerd door de zoons van Daphne Caruana Galizia – die belast zijn met SLAPPs die ondanks haar dood gewoon doorgaan – zet CASE zich in voor de totstandkoming van wettelijke bescherming tegen SLAPPs in de EU. Deze inspanningen hebben mede geresulteerd in de totstandkoming van de hierna te bespreken wet- en regelgeving.
112. Het Europees Parlement (“EP”) neemt in 2021 een resolutie aan over SLAPPs waarin het EP verwijst naar een lange lijst van onderzoeken en stellingnames over SLAPPs en constateert dat (i) SLAPPs “a direct and detrimental impact on democratic participation, societal resilience and dialogue” hebben en (ii) SLAPPs direct in strijd zijn met de kernwaarden van de EU zoals neergelegd in art. 2 VEU (**productie 29**).³⁹
113. Het EP uit dan ook zijn zorgen over SLAPPs en roept de Commissie op tot het ontwikkelen van ‘harde’ en ‘zachte’ wetgeving ter bescherming van slachtoffers van SLAPPs (waaronder “NGO’s, civil society and other actors actors engaging in public participation, such as those working on human rights and environmental issues”, onder M). Het EP benoemt daarbij dat “SLAPPs and SLAPP threats may also be brought against watchdogs within the Union by actors in third countries and before courts in third countries” (productie 29, onder N). Zonder wetgeving vanuit de EU zullen SLAPPs volgens het EP “continue to threaten democracy, the rule of law and the fundamental rights of freedom of expression, association and peaceful assembly and information in the Union” (par. 22). Daarbij roept het EP op om het begrip ‘SLAPP’ breed te definiëren, want “if measures only address defamation lawsuits, actions on other civil matters or criminal procedures may still be used at the initiative of claimants based in or outside the Union” (par. 22).
114. In april 2022 geeft de Europese Commissie (de “**Commissie**”) invulling aan de oproep van het EP door de publicatie van een Aanbeveling en het eerste concept van de hierna te bespreken anti-SLAPP richtlijn.⁴⁰

4.3 Anti-SLAPP Richtlijn en Aanbeveling Comité van Ministers

115. In april 2022 publiceert de Commissie het eerste wetsvoorstel voor een anti-SLAPP Richtlijn. Deze richtlijn wordt ook wel ‘Daphne’s Law’ genoemd, ter nagedachtenis aan Daphne Caruana Galizia wiens zaak mede heeft geleid tot de totstandkoming van deze wetgeving. Na het doorlopen van het gebruikelijke wetgevingstraject is op 11 april 2024 de Richtlijn 2024/1069 betreffende de bescherming van doelwitten van SLAPP (hierna ook “de **Richtlijn**”)

³⁹ Deze waarden als neergelegd in art. 2 TEU zijn: “the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

⁴⁰ Europese Commissie 27 april 2022, Recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”), SWD(2022) 117 final.

definitief vastgesteld en in werking getreden op 6 mei 2024.⁴¹ De transpositietermijn is vastgesteld op twee jaar na inwerkingtreding, dus 7 mei 2026 (art. 22 lid 1 Richtlijn).⁴² De authentieke Engelse taalversie van de Richtlijn wordt overgelegd als **productie 30**.

116. De Richtlijn is een nadere uitwerking van het door art. 11 Handvest en art. 10 EVRM beschermde recht op vrijheid van meningsuiting en vrijheid van informatie (overweging 4 Richtlijn). Dit recht omvat onder meer de vrijheid om een mening te hebben en om informatie te delen met het publiek, zonder inmenging van publieke autoriteiten en 'regardless of frontiers'. Uit de overwegingen van de Richtlijn volgt dat het doel ervan is om te verzekeren dat journalisten en mensenrechtenverdedigers binnen de EU en haar lidstaten actief deel kunnen nemen aan het publieke leven en debat, en partijen ter verantwoording kunnen roepen zonder angst voor intimidatie (overweging 11 Richtlijn). Mensenrechtenverdedigers zijn in de Richtlijn als volgt gedefinieerd (overweging 11 Richtlijn):

"Mensenrechtenverdedigers zijn personen, groeperingen en maatschappelijke organisaties die universeel erkende mensenrechten en fundamentele vrijheden bevorderen en beschermen. Mensenrechtenverdedigers zetten zich in om burger-, politieke, economische, sociale, culturele, milieu-, klimaat-, vrouwen- en lhbtq-rechten te bevorderen en te beschermen en directe of indirecte discriminatie, zoals bepaald in artikel 21 van het Handvest, te bestrijden. In het licht van het milieu- en klimaatbeleid van de Unie moet ook aandacht worden besteed aan de milieurechtenverdedigers, aangezien zij een belangrijke rol spelen in Europese democratieën."

117. De dreiging van SLAPPs voor het publieke debat en een democratische samenleving die breed is signaleerd wordt in de overwegingen onderschreven, evenals de noodzaak voor Uniewetgeving om een minimum beschermingsniveau tegen SLAPPs binnen de EU te realiseren.
118. Uitgangspunt bij de Richtlijn is dat de daarin vastgelegde regels van toepassing zijn op SLAPPs met een 'cross-border' element, hoewel het lidstaten vrijstaat hier verdergaande bescherming voor te bieden. In dit verband geeft de Richtlijn bijzondere aandacht aan de dreiging die voortvloeit uit SLAPPs die in derde landen ('third countries', dus buiten de EU) tegen in de EU gevestigde 'public watchdogs' worden aangespannen (overweging 43 Richtlijn, onderstreping: advocaat):

"In een grensoverschrijdende context is het ook van belang om de dreiging te onderkennen die uitgaat van SLAPP's in derde landen tegen journalisten, mensenrechtenverdedigers en andere personen die bij publieke participatie betrokken zijn en in de Unie wonen of gevestigd zijn. Als gevolg van SLAPP's in derde landen kunnen bij publieke participatie betrokken personen tot buitensporige schadevergoedingen worden veroordeeld. Gerechtelijke procedures

⁴¹ De volledige titel van de Richtlijn luidt als volgt: Richtlijn (EU) 2024/1069 van het Europees Parlement en de Raad van 11 april 2024 betreffende bescherming van bij publieke participatie betrokken personen tegen kennelijk ongegronde vorderingen of misbruik van procesrecht ("strategische rechtszaken tegen publieke participatie").

⁴² Zie voor een gedetailleerd overzicht van het wetgevingstraject de pagina 'Legislative Train Schedule' op de site van het EP, beschikbaar via: <https://www.europarl.europa.eu/legislative-train/package-european-democracy-action-plan/file-initiative-against-abusive-litigation-targeting-journalists-and-rights-defenders>.

in derde landen zijn gecompliceerder en duurder voor de doelwitten van SLAPP's. Om de democratie en het recht op vrijheid van meningsuiting en van informatie in de Unie te waarborgen en om te voorkomen dat de door deze richtlijn geboden waarborgen worden ondermijnd door het aanspannen van gerechtelijke procedures in andere rechtsgebieden, is het van belang om bescherming te bieden tegen kennelijk ongegronde vorderingen en misbruik van procesrecht gericht tegen publieke participatie in derde landen."

119. De Richtlijn onderstreept daarbij dat SLAPPs ook impact hebben op andere rechten van de slachtoffers van SLAPPs dan de uitingsvrijheid, zoals het recht op reputatie (overweging 16) "Gerechtelijke procedures tegen publieke participatie kunnen nadelige gevolgen hebben voor de geloofwaardigheid en de reputatie van bij publieke participatie betrokken natuurlijke personen en rechtspersonen en kunnen hun financiële en andere middelen uitputten". Inderdaad, zo blijkt expliciet uit de Richtlijn (overweging 46): "Het is juist de bedoeling van SLAPP-eisers die misbruik maken van procesrecht gericht tegen publieke participatie om dergelijke schade te veroorzaken".
120. Zoals hierna toegelicht zal worden bevat de Richtlijn dan ook, in het licht van deze grote risico's voor slachtoffers van SLAPPs verschillende specifieke bepalingen om partijen die gevestigd zijn in de EU te beschermen tegen SLAPPs.
121. Art. 1 Richtlijn bepaalt het onderwerp van de Richtlijn, namelijk "[te voorzien in] waarborgen tegen kennelijk ongegronde vorderingen of misbruik van procesrecht in burgerlijke zaken met grensoverschrijdende gevolgen die aanhangig worden gemaakt tegen natuurlijke personen en rechtspersonen, vanwege hun betrokkenheid bij publieke participatie". Art. 2 Richtlijn beperkt de werking van de Richtlijn tot civiele of commerciële zaken met 'grensoverschrijdende gevolgen' die worden aangebracht door het starten van "burgerlijke of handelszaken met grensoverschrijdende gevolgen die in burgerrechtelijke procedures aanhangig worden gemaakt, met inbegrip van procedures voor voorlopige en bewarende maatregelen en reconventionele vorderingen waarvan in burgerrechtelijke procedures kennis wordt genomen, ongeacht de aard van het gerecht". Art. 3 lid 1 Richtlijn bepaalt dat de Richtlijn minimumharmonisatie betreft, en dat het lidstaten dus vrij staat om verdergaande bescherming te bieden voor slachtoffers van SLAPPs.
122. De Richtlijn biedt bescherming tegen "kennelijk ongegronde vorderingen of misbruik van procesrecht" (art. 1 Richtlijn, "manifestly unfounded or abusive court proceedings"), waarbij 'abusive court proceedings' krachtens art. 4 lid 3 Richtlijn breed gedefinieerd is:

"gerechtelijke procedures die niet worden ingeleid om daadwerkelijk een recht te doen gelden of uit te oefenen, maar die als voornaamste doel het voorkomen, beperken of bestraffen van publieke participatie hebben, waarbij vaak misbruik wordt gemaakt van ongelijke machtsverhoudingen tussen de partijen en ongegronde vorderingen worden ingesteld. Mogelijke aanwijzingen voor een dergelijk doel omvatten bijvoorbeeld:

- (a) de onevenredige, buitensporige of onredelijke aard van de vordering of een deel daarvan, met inbegrip van de buitensporige waarde van het geschil;
- (b) het bestaan van meerdere procedures die door de eiser of met hem of haar gelieerde partijen aanhangig zijn gemaakt in verband met soortgelijke aangelegenheden;

- (c) intimidatie, pesterijen of bedreigingen door de eiser of diens vertegenwoordigers voor of tijdens de gerechtelijke procedure, alsmede gelijksoortige gedragingen door de eiser in gelijksoortige of gelijktijdige zaken;
- (d) het te kwader trouw gebruiken van procedurele tactieken, zoals het vertragen van de procedure, forumshoppen door middel van fraude of misbruik van procesrecht of het te kwader trouw stopzetten van zaken in een later stadium van de procedure.”

123. Daarbij is van belang dat dit geen uitputtende of cumulatieve set criteria is: het gaat hier slechts om ‘indicatoren’ van een SLAPP. In de overwegingen van de Richtlijn staan nog verschillende andere indicatoren en aanwijzingen waaruit opgemaakt kan worden dat er sprake is van een SLAPP. Daarbij is van belang dat ook als een zaak deels gefundeerd is, dit niet uitsluit dat er sprake kan zijn van een SLAPP (overweging 29 Richtlijn):

“Vorderingen die zijn ingediend in het kader van misbruik van procesrecht gericht tegen publieke participatie kunnen geheel of gedeeltelijk ongegrond zijn. Dit betekent dat een vordering niet noodzakelijkerwijs volledig ongegrond hoeft te zijn om de procedure als misbruik van procesrecht te beschouwen. Zo kan er zelfs bij een kleine schending van persoonlijkheidsrechten die aanleiding kan geven tot een bescheiden vordering tot schadevergoeding op grond van het toepasselijke recht, nog steeds sprake zijn van misbruik van procesrecht zijn indien een kennelijk buitensporig bedrag of buitensporige voorziening in rechte wordt gevorderd.”

124. Voor zover in de onderhavige zaak relevant bevat de Richtlijn in Hoofdstuk 5 aan in de EU gevestigde partijen bescherming tegen SLAPPs in derde landen, dus landen buiten de EU. Art. 16 Richtlijn biedt bescherming tegen de tenuitvoerlegging van in derde landen gewezen vonnissen in SLAPP-zaken: dat is in deze zaak (nog) niet aan de orde.

125. Art. 17 lid 1 Richtlijn biedt in een EU-lidstaat gevestigde partijen verdere bescherming tegen in derde landen tegen hen aanhangig gemaakte SLAPPs:

“De lidstaten zorgen ervoor dat, wanneer misbruik van procesrecht wordt gemaakt gericht tegen publieke participatie aanhangig is gemaakt door een buiten de Unie wonende of gevestigde eiser bij een gerecht in een derde land tegen een in een lidstaat wonende natuurlijke persoon of gevestigde rechtspersoon, die persoon voor de gerechten van zijn of haar woon- of vestigingsplaats vergoeding kan vorderen voor de schade en de kosten die in verband met de procedure voor het gerecht van het derde land zijn geleden.”

126. Hieruit volgt dus dat het in EU-lidstaten mogelijk moet zijn voor een partij die in die lidstaat is gevestigd, en tegen wie een SLAPP in een derde land aanhangig is gemaakt, voor de rechter van de betreffende lidstaat een eis tot schadevergoeding in te dienen tegen de eiser in de SLAPP. Blijkens de overwegingen bij de Richtlijn geldt in dit verband dat het in een EU-lidstaat gevestigde slachtoffer van een SLAPP in een derde land “ongeacht of er een beslissing is gewezen dan wel of er een eindbeslissing is genomen, aangezien doelwitten van SLAPP’s schade kunnen lijden en kosten kunnen maken vanaf het begin van gerechtelijke procedures en mogelijk zonder dat er een beslissing wordt gewezen, zoals wanneer de vordering wordt ingetrokken” (overweging 44).

127. Op grond van art. 17 lid 2 Richtlijn kunnen lidstaten de toepassing van het bepaalde in art. 17 lid 1 Richtlijn tot op zekere hoogte beperken zolang de SLAPP in het derde land nog aanhangig is. Nederland heeft aangegeven geen gebruik te zullen maken van deze beperking, zoals hierna verder toegelicht zal worden. Art. 17 lid 1 Richtlijn geldt daarom in volle omvang voor Nederland.

128. Uit de Richtlijn volgt verder dat er ruim baan dient te zijn voor toewijzing van vorderingen in zaken waar slachtoffers van SLAPPs bescherming in rechte vragen, waaronder een bevel tot publicatie van het in een dergelijke zaak te wijzen vonnis (overweging 31 Richtlijn):

“The main objective of giving courts or tribunals the possibility of imposing penalties or other equally effective appropriate measures is to deter potential claimants from initiating abusive court proceedings against public participation. Other appropriate measures, including the payment of compensation for damage or the publication of the court decision, where provided for in national law, should be as effective as penalties.”

129. Vlak voordat de Richtlijn definitief is aangenomen, op 11 april 2024, heeft het Comité van Ministers van de Raad van Europa op 5 april 2024 een Aanbeveling gepubliceerd over de bestrijding van SLAPPs (**productie 31**), overwegende dat op de lidstaten op grond van art. 10 EVRM onder meer een positieve verplichting rust om een veilig en positief klimaat te verzekeren voor deelname aan het publieke debat, zonder angst voor represailles (p. 1).⁴³

130. Het Comité van Ministers onderstreept verder de bijzondere dreiging die uitgaat van SLAPPs met een ‘cross-border’ element, gezien de extra complexiteit, kosten en stress die dergelijke zaken doorgaans met zich meebrengen (punt 11). Ook moedigt het Comité van Ministers lidstaten van de Raad van Europa aan om de bescherming van art. 17 lid 1 Richtlijn te verzekeren voor hun ingezetenen (punt 14):

“Member States are encouraged to introduce rules to ensure that, where SLAPPs have been brought before judicial or other authorities of a third country against a natural or legal person domiciled in a member State, that person may seek, before judicial or other authorities of the place where they are domiciled, compensation of the damages and the costs incurred in connection with the proceedings before the judicial or other authorities of the third country, irrespective of the domicile of the claimant in the proceedings in the third country.”

5 BEVOEGDHEID EN TOEPASSELIJK RECHT

5.1 Toetsingskader bevoegdheid

131. In art. 7, aanhef en lid 2 Brussel Ibis is bepaald:

“Een persoon die woonplaats heeft op het grondgebied van een lidstaat, kan in een andere lidstaat voor de volgende gerechten worden opgeroepen (...) ten aanzien van verbintenissen uit onrechtmatige daad, voor het gerecht van de plaats waar het schadebrengende feit zich heeft voorgedaan of zich kan voordoen.”

⁴³ Zie in dit verband ook EHRM 14 september 2010, nr. 2668/07 e.a. (*Dink/Turkije*), r.o. 106.

132. Uit de jurisprudentie van het HvJ EU volgt dat in zaken over verbintenissen uit onrechtmatige daad zowel opgeroepen kan worden voor de rechter van de plaats waar de schadeveroorzakende handeling heeft plaatsgevonden (*Handlungsort*) als de plaats waar de schade is ingetreden (*Erfolgort*). De eiser kan kiezen bij welke plaats hij de gedaagde(n) in rechte oproept. Gedaagden zijn allen buiten de EU gevestigd, waarmee de rechtsmacht van de Nederlandse rechter volgt uit art. 6, aanhef en onder e Rv, dat is gebaseerd op (en naar vaste rechtspraak op dezelfde wijze uitgelegd wordt als) art. 7, aanhef en lid 2 Brussel I bis.
133. Art. 17 lid 2 Richtlijn verplicht, zoals hiervoor toegelicht, lidstaten om te verzekeren dat de rechter in die lidstaat bevoegd is om zaken te behandelen waarin slachtoffers van SLAPPs in derde landen vergoeding eisen van de schade en de kosten die in verband met de procedure voor het gerecht van het derde land zijn geleden ("the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third-country"). Dit is in Nederland al mogelijk, gezien het bepaalde in art. 6, aanhef en onder e Rv.⁴⁴
134. Op 1 oktober 2024 heeft de wetgever in het kader van de internetconsultatie de concept Implementatiewet anti-SLAPP Richtlijn met de bijbehorende concept Memorie van Toelichting gepubliceerd (deze stukken worden overgelegd als **productie 32 en 33**).⁴⁵ Het gaat om een beperkte wetwijziging. De wetgever licht dit in de concept Memorie van Toelichting als volgt toe:

"Op de in deze richtlijn opgenomen maatregel van zekerheidstelling voor de proceskosten en schadevergoeding na, voorziet het Nederlandse (proces)recht reeds in de door de richtlijn voorgeschreven maatregelen. Hiervoor is dus geen afzonderlijke implementatie nodig."

135. De wetgever bevestigt in de concept Memorie van Toelichting expliciet dat implementatie van de Richtlijn eveneens niet nodig is ten aanzien van art. 17 lid 1 Richtlijn, overwegend:

Op grond van deze bepaling moeten de lidstaten ervoor zorgen dat als een SLAPP aanhangig is gemaakt door een buiten de Unie wonende of gevestigde eiser bij een gerecht in een derde land tegen een in een lidstaat wonend SLAPP-doelwit, dat SLAPP-doelwit bij een gerecht van zijn of haar woon- of vestigingsplaats vergoeding kan vorderen voor de schade en de kosten die in verband met de procedure voor het gerecht van het derde land zijn geleden. Het Nederlandse recht voorziet al in deze regeling.

De Nederlandse regeling sluit aan op artikel 7 Verordening Brussel I bis. Op basis van vaste rechtspraak ziet de bepaling van artikel 7 sub 2 (plaats waar het schadebrengende feit zich heeft voorgedaan) zowel op het schadebrengende feit als op de plaats waar de directe schade is ingetreden. Bij SLAPPs in een derde land gericht tegen een in Nederland woonachtig persoon mag worden aangenomen dat

⁴⁴ Zie bijvoorbeeld Rb. Den Haag 9 oktober 2019, ECLI:NL:RBDHA:2019:10254 (*Ard-Choille*), r.o. 5.41 en 5.42; Rb. Overijssel, locatie Almelo 20 mei 2020, ECLI:NL:RBOVE:2020:1808, r.o. 2.9.; alsook Rb. Amsterdam 9 maart 2023, ECLI:NL:RBAMS:2021:950 (*Bellingcat/RIA FAN*), r.o. 2.1; Gerechtshof Den Haag 6 oktober 2015, ECLI:NL:GHSHE:2015:3904 (*X/Google*), r.o. 3.3.2. Zie voor Europese rechtspraak in dit verband bijvoorbeeld HvJ EU 28 januari 2015, C-375/13, ECLI:EU:C:2015:37 (*Kolassa*), HvJ EU 12 september 2018, C-304/17, ECLI:EU:C:2018:701 (*Löber/Barclays*).

⁴⁵ Zie: <https://www.internetconsultatie.nl/antislapp/b1>.

de directe schade voor deze persoon zich (ook) voordoet in Nederland. Dit betekent dat voor de implementatie van artikel 17 richtlijn al een voorziening is getroffen.”

136. Zoals hiervoor al genoemd ziet de wetgever verder af van de mogelijkheid tot beperking van bescherming van slachtoffers van SLAPPs ex art. 17 lid 2 Richtlijn, overwegend:

“Ingevolge het tweede lid van artikel 17 van de richtlijn kunnen lidstaten de mogelijkheid om schadevergoeding te vragen in de lidstaat van het SLAPP-doelwit beperken zolang een procedure aanhangig is in een derde land. Van deze mogelijkheid wordt geen gebruik gemaakt, omdat er geen reden is om de mogelijkheden van potentiële SLAPP-doelwitten in deze te beperken.”

137. Hieruit volgt dat de wetgever een zo breed mogelijke bescherming van ‘potentiële SLAPP-doelwitten’ beoogt. Voor de bescherming tegen SLAPPs in derde landen is er dus al een voorziening getroffen in het Nederlandse procesrecht en is implementatie niet nodig. Wel geeft art. 17 lid 1 Richtlijn verder houvast bij de invulling van de bestaande criteria voor rechtsmacht.

5.2 Toepassing toetsingskader op onderhavige casus

138. De grondslag van deze zaak is het onrechtmatig handelen van gedaagden jegens GPI, c.q. misbruik maken van recht jegens GPI, in het bijzonder door SLAPPs tegen GPI aan te spannen in een derde land (de Verenigde Staten) en alle handelingen die daarmee verband houden, waaronder het publiceren van onjuiste uitingen over GPI die wereldwijd (waaronder in Nederland) beschikbaar en vindbaar zijn via het internet.⁴⁶
139. GPI, dat in Nederland gevestigd is, lijdt hierdoor schade, op grond waarvan mag worden aangenomen dat de directe schade voor GPI zich (ook c.q. in elk geval) voordoet in Nederland. Zie in dit verband de hiervoor aangehaalde toelichting van de wetgever specifiek in de context van SLAPPs: “Bij SLAPPs in een derde land gericht tegen een in Nederland woonachtig persoon mag worden aangenomen dat de directe schade voor deze persoon zich (ook) voordoet in Nederland.” Dat geldt in deze zaak dus ook. De schade die GPI door de handelwijze van GPI lijdt kan zij dus in een zaak voor de Nederlandse rechter vorderen op grond van (in elk geval) art. 6, aanhef en onder e Rv, in samenhang gelezen met art. 7 Verordening Brussel I bis en art. 17 lid 1 Richtlijn.
140. De schade die GPI lijdt is te kwalificeren als vermogensschade, schade door het opzettelijk frustreren van GPI in het verwezenlijken van haar ideële doelen en reputatieschade. Voor een uitgebreidere bespreking hiervan verwijst GPI naar par. 7 van deze dagvaarding; zie aldaar.
141. Deze schade lijdt GPI (ook c.q. in elk geval) in Nederland, waar het centrum van haar belangen is. GPI is sinds 1979 statutair gevestigd in Nederland (te Amsterdam) en houdt kantoor aan het Surinameplein te Amsterdam, waar ook een significant deel van haar personeel werkt: 131 van haar medewerkers werken in Nederland (228 andere medewerkers zijn in verschillende landen wereldwijd werkzaam). De in Nederland werkzame werknemers van GPI hebben een arbeidsovereenkomst waarop Nederlands recht van toepassing is. GPI heeft de

⁴⁶ Zie in dit verband HvJEU 25 oktober 2011, ECLI:EU:C:2011:685 (*eDate*).

ANBI-status en publiceert in dit verband jaarlijks de op grond daarvan verplichte informatie.⁴⁷ De meest recente jaarrekening van GPI (2023) wordt overgelegd als **productie 34**. GPI houdt zijn bankrekeningen verder aan in Nederland.

142. Als gezegd is GPI de houder van de handelsmerken van het Greenpeace-netwerk. De andere entiteiten in het Greenpeace-netwerk ontvangen toestemming van GPI om deze rechten te gebruiken via een licentieovereenkomst waarop Nederlands recht van toepassing is.
143. GPI is tevens bevrachter van verschillende schepen, zoals de befaamde Arctic Sunrise en de Rainbow Warrior, die varen onder Nederlandse vlag. Er zijn in totaal 89 bemanningsleden in dienst bij GPI, die allen een arbeidsovereenkomst naar Nederlands recht hebben. De crew die werkt op de schepen van GPI, en woonachtig is in de EU, valt dan ook onder de Stichting Bedrijfspensioenfonds voor de Koopvaardij.
144. Op grond van het voorgaande komt de Nederlands rechter rechtsmacht toe in deze zaak. Voor zover de Rechtbank nader bewijs vergt van de stelling dat het centrum van de belangen van GPI in Nederland is gelegen, en/of de stelling dat GPI op de hiervoor omschreven wijzen in Nederland schade heeft geleden, biedt GPI dat bij deze uitdrukkelijk aan.
145. De relatieve bevoegdheid van de Rb. Amsterdam volgt uit het bepaalde in art. 102 Rv.⁴⁸
146. GPI wil er tot slot nog op wijzen dat deze zaak op verschillende vlakken bijzonder is, omdat er – voor zover zij weet – geen precedent voor bestaat. Immers, zij vraagt om bescherming tegen in SLAPP in een land dat buiten de EU is gelegen, waarbij verschillende nieuwe relevante normen van belang zijn (o.a. de Richtlijn en soft law over SLAPPs). Deze normen vereisen toepassing van het nationale procesrecht in lijn met het doel om vergaande bescherming tegen SLAPPs te verwezenlijken. Toepassing van het nationale procesrecht dient dan ook in lijn te zijn met het bepaalde in deze normen. Zie in dit verband overweging 32 Richtlijn, dat waarin expliciet is toegelicht dat de toepassing van “alle procedurele waarborgen” uit de Richtlijn “niet onnodig moeilijk” mag zijn voor slachtoffers van SLAPPs. Het zou dus wringen met de bedoeling van de Richtlijn en de consensus binnen de EU/Raad van Europa die volgt uit de hiervoor geciteerde ‘soft law’ normen om in het nationale procesrecht hoge formele drempels op te werpen voor bescherming tegen SLAPPs. Dat geldt temeer nu de Nederlandse wetgever zelf aangeeft dat geen aanpassing van de Nederlandse wet nodig is voor de implementatie van de Richtlijn, waarmee de inhoud van de Richtlijn direct afdwingbaar is.

5.3 Toepasselijk recht

147. Nu de schade van GPI zich voordoet in Nederland en onder meer bestaat uit reputatieschade, zoals hiervoor toegelicht, is op grond van art. 10:159 BW, in samenhang gelezen met art. 4 lid 1 van de Rome II-Verordening, de Richtlijn en het Nederlandse recht van toepassing op deze zaak.⁴⁹

⁴⁷ Zie: <https://www.greenpeace.org/international/about/annual-report/>.

⁴⁸ Zie in dit verband Rb. Amsterdam 9 maart 2021, ECLI:NL:RBAMS:2021:950 (*Bellingcat/OOO Fan*), r.o. 2.1.

⁴⁹ Art. 4 lid 1 Rome-II Verordening bepaalt immers: “Tenzij in deze verordening anders bepaald, is het recht dat van toepassing is op een onrechtmatige daad het recht van het land waar de schade zich voordoet, ongeacht in welk land de schadeveroorzakende gebeurtenis zich heeft voorgedaan en ongeacht in welke landen de indirecte gevolgen van die gebeurtenis zich voordoen.” Zie ook HR 3 juni 2016, ECLI:NL:HR:2016:1054 (*Dahabshii*),

6 ONRECHTMATIG HANDELEN EN MISBRUIK VAN RECHT ENERGY TRANSFER

148. De als “SLAPP” aan te merken handelwijze van Energy Transfer jegens GPI, waaronder het aanspannen van de Federale Rechtszaak en de Staatsrechtszaak (samen: de “**Rechtszaken**”) door Energy Transfer tegen GPI, en het doen van onjuiste uitingen over GPI, is onrechtmatig en kwalificeert als misbruik van recht naar het Nederlandse civiele recht (art. 6:162 en 3:13 BW), gelezen in samenhang met artikel 8 en 10, artikel 7, 10 en 11 Handvest en het bepaalde in de Richtlijn. GPI zal hierna toelichten waaruit dit onrechtmatige handelen en misbruik van recht bestaat. Zij gaat eerst in op het onrechtmatige handelen ex art. 6:162 BW.
149. Energy Transfer handelt onrechtmatig jegens GPI in de zin van art. 6:162 BW, door in strijd te handelen met haar wettelijke plichten en in strijd met wat volgens het ongeschreven recht in het maatschappelijk verkeer betamelijk is.
150. De wettelijke plichten die op Energy Transfer rusten zijn onder meer nader uitgewerkt in art. 8 en 10 EVRM en de Richtlijn, in samenhang gelezen met art. 7 en 11 Handvest.⁵⁰ De handelwijze van Energy Transfer, zoals hierna verder toegelicht, is strijdig met deze de op haar rustende wettelijke verplichtingen die voortvloeien uit deze normen, in het bijzonder het niet schaden van de uitingsvrijheid van GPI en het niet schaden van de reputatie van GPI.
151. Op de Staat rust bovendien zoals toegelicht ex art. 8 en 10 EVRM een positieve verplichting om de door dat artikel beschermde rechten te verzekeren. Deze positieve verplichting is nader ingevuld door het bepaalde in de Richtlijn en de hiervoor besproken overige rechtsbronnen. Het grote belang van GPI bij bescherming door de Nederlandse rechter tegen de door Energy Transfer aangespannen SLAPPs is ook hierin gelegen. De handelwijze van Energy Transfer leidt immers tot een groot ‘chilling effect’ voor GPI, en overigens ook voor andere organisaties die zich zouden willen uitlaten over Energy Transfer of andere machtige partijen in de Verenigde Staten. Deze mate van beperking van de rechten van GPI ex art. 8 en 10 EVRM (en van het publiek ex art. 10 EVRM) is in de Nederlandse en Europese rechtssfeer onaanvaardbaar.
152. Uit de toepasselijke grondrechtelijke normen, de normen van ‘soft law’ die hiervoor zijn besproken en de Richtlijn is verder glashelder dat het aanspannen van een SLAPP en in samenhang daarmee het doen van onjuiste uitingen over een partij tegen wie een SLAPP is aangespannen in strijd is met de maatschappelijke betamelijkheid. Ook daarom handelt Energy Transfer onrechtmatig jegens GPI. GPI wijst daarbij in elk geval met nadruk op de duidelijke consensus die binnen de EU en de Raad van Europa bestaat dat SLAPPs, en juist ook SLAPPs in landen buiten de EU c.q. Raad van Europa, een groot gevaar zijn voor de uitingsvrijheid en daarmee de democratie. De lidstaten moeten daarom alles op alles zetten om partijen die zich binnen hun rechtssfeer bevinden daartegen te beschermen. Daaruit valt, naar overtuiging van GPI, ook op te maken dat bestaande wet- en regelgeving zo dient te worden uitgelegd dat slachtoffers van SLAPPs maximale bescherming dienen te krijgen en op zo eenvoudig mogelijke wijze aanspraak moeten kunnen maken op deze bescherming in rechte (zie ook overweging 32 Richtlijn, hiervoor aangehaald).
153. GPI meent verder dat de toepasselijke normen van Nederlands recht in directe samenhang gelezen kunnen worden met de relevante bepalingen in de Richtlijn, zoals de Nederlandse

⁵⁰ Deze wettelijke plichten vinden naar vaste rechtspraak ook toepassing in relaties tussen private partijen via de leer van de horizontale werking van grondrechten.

wetgever ook expliciet bevestigt. Voor zover uw Rechtbank hier anders over zou oordelen, geldt in elk geval dat het in deze zaak toepasselijke recht zoals hiervoor uiteengezet in conformiteit met de Richtlijn dient te worden uitgelegd.

154. De handelwijze van Energy Transfer die met inachtneming van het voorgaande als onrechtmatig jegens GPI is aan te merken, en waar GPI uw Rechtbank in deze zaak bescherming tegen vraagt, is als volgt te kenschetsen:

- (i) GPI is een in Amsterdam gevestigde NGO die zich inzet voor het publieke belang en in dat kader gebruik heeft gemaakt van haar uitingsvrijheid om legitieme kritiek te uiten op Energy Transfer. Daarop is zij tot tweemaal toe door Energy Transfer in slepende en complexe civiele procedures betrokken in de Verenigde Staten (een derde land in de zin van de Richtlijn). Hiermee valt de zaak binnen het toepassingsgebied van de Richtlijn (art. 1 en 2 Richtlijn) en is er sprake van een 'grensoverschrijdend' element, waarmee ook vaststaat dat de behandeling van deze zaak complexer en kostbaarder is voor GPI (overweging 43 Richtlijn);
- (ii) In de onderhavige zaak speelt in dit kader de bijzondere omstandigheid dat uit uitingen van Energy Transfer zélf op te maken valt dat het doel van Energy Transfer met het aanspannen van de Rechtszaken is het straffen van het Greenpeace-netwerk voor zijn (zeer beperkte) betrokkenheid bij de protesten tegen de DAPL. Daarmee wenst Energy Transfer een signaal af te geven, niet alleen aan Greenpeace maar aan alle groepen die zich inzetten in het publiek belang, zoals zij zei: de procedures zijn bedoeld "to send a message, you can't do this (...) and it's not going to be tolerated in the United States". Het beperken van de ruimte voor, en deelname aan, het publieke debat in een pluriforme democratie is geen legitiem doel voor het aanspannen van rechtszaken. Energy Transfer komt dus, voor zover relevant, ook geen (geslaagd) beroep toe op art. 6 EVRM of een vergelijkbare grondrechtelijke bepaling. Zie in meer detail onder (v).
- (iii) Hiervoor is in detail uiteengezet dat de Rechtszaken kennelijk ongefundeerd zijn. GPI wijst er daarbij op dat voor toepassing van de bepalingen uit de Richtlijn voldoende is dat een rechtszaak kwalificeert als misbruik van recht óf ongefundeerd is (art. 1 Richtlijn). GPI meent dat de Rechtszaken onder beide categorieën vallen. Overigens is voor de behandeling van deze zaak alleen van belang dat de eisen in de Rechtszaken jegens GPI ongefundeerd zijn. GPI meent dat dit evenzo geldt voor de eisen jegens alle andere gedaagden, maar dat is niet relevant voor de beoordeling van de onderhavige zaak. In dit verband is nog relevant dat Energy Transfer vanuit het oogpunt van schadebeperkend handelen gehouden is de Staatsrechtszaak jegens GPI in te trekken, maar dat zij dit welbewust heeft geweigerd.
- (iv) Er is evident sprake van een ongelijke machtsverhouding tussen GPI en Energy Transfer (art. 4 lid 3 Richtlijn). Energy Transfer is een gigantisch bedrijf dat in 2023 bijna USD 80 miljard omzet genereerde.⁵¹ Kelcy Warren is bovendien een prominente donor van president Donald Trump: hij gaf bijna USD 6 miljoen dollar aan de

⁵¹ Wall Street Journal Markets, Energy Transfer LP, zie:
<https://www.wsj.com/market-data/quotes/ET/financials/annual/income-statement>.

herverkiezingscampagne van Trump in 2024.⁵² Energy Transfer heeft daarmee een mate van financiële en politieke macht die onvergelijkbaar is met die van GPI.

- (v) Ook nadere toepassing van de indicatoren uit de Richtlijn voor 'abusive court proceedings' (misbruik van procesrecht gericht tegen publieke participatie) wijst er op dat de Rechtszaken kwalificeren als SLAPPs. Zo is er in beide zaken sprake van disproportionele, excessieve en onredelijke eisen (art. 4 lid 3 onder (a) Richtlijn). De gekozen grondslagen zijn kennelijk ongefundeerd, en onverenigbaar met het Eerste Amendement van de Amerikaanse Grondwet en de geëiste schadevergoeding van honderden miljoenen euro's is duidelijk excessief. De Richtlijn noemt expliciet "the excessive dispute value" (de buitensporige waarde) als een belangrijke indicator van een SLAPP, in lijn met de vaste rechtspraak van het EHRM en de gezaghebbende commentaren van Commissaris Dunja Mijatović ("demands for damages are often exaggerated") en Special Rapporteur Annalisa Ciampi ("they generally include exorbitant claims for damages"). Zie ook overweging 43 Richtlijn: "Als gevolg van SLAPP's in derde landen kunnen bij publieke participatie betrokken personen tot buitensporige schadevergoedingen worden veroordeeld".
- (vi) Een verdere aanwijzing dat de Rechtszaken kwalificeren als SLAPPs is dat Energy Transfer ervoor heeft gekozen om ook nadat de op federaal recht gebaseerde klachten in de Federale Rechtszaak als kennelijk ongegrond zijn afgedaan vrijwel onmiddellijk de Staatsrechtszaak aan te spannen tegen GPI. Daarmee is er sprake van verschillende procedures over hetzelfde onderwerp (art. 4 lid 3 onder (b) Richtlijn) en het te kwader trouw gebruiken van procedurele tactieken (art. 4 lid 3 onder (d) Richtlijn). Daarbij is van belang – voor zover Energy Transfer zou betogen dat dit haar goed recht was – dat Energy Transfer inhoudelijk in de kern dezelfde verwijten voorlegde in de Staatsrechtszaak waar de federale rechter korte metten mee had gemaakt toen de zaak verpakt was als RICO-claim.
- (vii) In dit kader is ook noemenswaardig dat Energy Transfer er telkens voor heeft gekozen om de Rechtszaken jegens GPI aan te spannen in North Dakota. GPI heeft een brief mede ondertekend, wat onvoldoende reden is om haar voor twee verschillende rechters in North Dakota te slepen. Dat geldt temeer nu er in North Dakota geen anti-SLAPP wetgeving van toepassing is. Daarmee kan deze handelwijze van Energy Transfer jegens GPI gekwalificeerd worden als een vorm van 'abusive forum shopping' (art. 4 lid 3 onder (d) Richtlijn).
- (viii) Als gevolg van de Rechtszaken is GPI gedwongen hoge kosten te maken voor onder meer juridische bijstand. Het kostenelement speelt ook een rol bij de kwalificatie van zaken als SLAPPs, zie bijvoorbeeld overweging 43 Richtlijn. Daarbij speelt een rol dat Energy Transfer (zonder succes) vele procedurele hordes heeft opgeworpen, onder meer om 'discovery' van documenten aan haar kant te voorkomen en te verhinderen dat Kelcy Warren als getuige gehoord zou worden. Dit leidde voor GPI telkens tot zeer significante extra kosten.
- (ix) De Rechtszaken gaan gepaard met het publiekelijk diskwalificeren van GPI zonder dat daar enige grond voor bestaat (zoals de Special Rapporteur het formuleert:

⁵² The Guardian 18 oktober 2024, 'Trump gets record donations from big oil but far less than \$1bn he wanted', <https://www.theguardian.com/us-news/2024/oct/18/election-trump-oil-gas-fundraising>.

publicatie van “allegations designed to smear, harass and overwhelm the campaigners”), wat ook een indicator is van een ‘abusive court case’ (art. 4 lid 3 onder (c) Richtlijn). In de Aanbeveling van het Comité van Ministers is als mogelijk kenmerk van SLAPP in dit kader genoemd: “the legal action is accompanied by a public relations offensive designed to bully, discredit or intimidate actors participating in public debate or aimed at diverting attention from the substantial issue at stake”.

- (x) Het publiekelijk diskwalificeren van GPI leidt tot schade aan de reputatie van GPI: er bestaat in de EU en Raad van Europa consensus over het feit dat dit een doel c.q. gevolg kan zijn van SLAPPs. Het is in elk geval ook onderdeel van het onrechtmatig handelen van Energy Transfer jegens GPI. Zoals hiervoor in detail uiteengezet heeft Energy Transfer in de SLAPPs die zij tegen GPI heeft aangespannen, en in media-uitingen en online uitingen rondom deze SLAPPs, GPI jarenlang continu beschuldigd van het plegen van ernstige strafbare feiten en allerlei ernstig onrechtmatig handelen. Deze uitingen – die tot op de dag van vandaag voortduren – zijn onjuist, zoals hiervoor toegelicht, en evident schadelijk voor GPI.
- (xi) In de Staatsrechtszaak heeft Energy Transfer in een later stadium belangrijke delen van haar zaak laten vallen, waaronder claims tegen een voormalige medewerker van GP Inc. die ten onrechte gedaagd was, claims met betrekking tot de Mariner East en Bayou Bridge pijpleidingen, en beschuldigingen van onrechtmatige uitingen over het tekortschieten van het overleg met de Standing Rock Sioux stam en het tekortschieten van de milieueffectrapportage voor de DAPL. Ook het ‘het te kwader trouw stopzetten van zaken in een later stadium van de procedure’ is een indicator van een SLAPP (art. 4 lid 3 onder (d) Richtlijn).
- (xii) In de Aanbeveling van het Comité van Ministers is tot slot als aanwijzing voor een als SLAPP te kwalificeren handelwijze genoemd: “the claimant or their representatives engage in legal intimidation, harassment or threats, or have a history of doing so”. In dat kader is noemenswaardig dat Kelcy Warren eerder een rechtszaak heeft aangespannen tegen de toenmalige Democratische gouverneurskandidaat Beto O'Rourke, en deze tot aan de Texas Supreme Court heeft uitgeprocedeerd. O'Rourke had kritiek geuit op het feit dat Energy Transfer tijdens een winterstorm in Texas haar tarieven had verhoogd en zo USD 2,4 miljard extra winst had gemaakt, waarna Kelcy Warren USD 1 miljoen aan de herverkiezingscampagne van gouverneur Greg Abbott schonk. O'Rourke achtte dit “pretty close to a bribe” met het doel om maatregelen tegen Energy Transfer te voorkomen. De Texaanse feitenrechter wees de eisen zonder meer af, onder verwijzing naar de uitingsvrijheid en de Texaanse anti-SLAPP wet – de Texas Supreme Court weigerde de zaak te behandelen.⁵³

155. Zowel de Federale Rechtszaak als de Staatsrechtszaak zijn al met al schoolvoorbeelden van onrechtmatige SLAPPs, zowel afzonderlijk als gezien in onderlinge samenhang. Als de Rechtszaken niet als SLAPP zouden kwalificeren meent GPI dat geen enkele zaak dat redelijkerwijs zal doen. Het aanspannen van de Rechtszaken, voortzetten van de Staatsrechtszaak en de verdere handelwijze van Energy Transfer in de context van de SLAPPs

⁵³ DW Magazine 15 december 2023, ‘Texas Supreme Court Declines to Review Kelcy Warren’s Defamation Suit Against Beto O’Rourke’, zie: <https://www.dmagazine.com/frontburner/2023/12/texas-supreme-court-declines-to-review-kelcy-warrens-defamation-suit-against-beto-orourke/>.

(waaronder het continu doen van onjuiste uitingen over GPI) is daarom zonder meer onrechtmatig jegens GPI.

156. Gezien Energy Transfer de Rechtszaken heeft aangespannen en zich overigens heeft gedragen zoals hiervoor omschreven is het onrechtmatige handelen aan haar toe te rekenen. Zoals GPI hierna in meer detail zal toelichten (par. 7) heeft zij hierdoor significante schade geleden en lijdt zij nog doorlopend schade. Die schade staat in direct causaal verband met de onrechtmatige handelwijze van Energy Transfer: zonder het aanspannen van de Rechtszaken en het overige handelen van Energy Transfer zou GPI geen schade hebben geleden. De normen waar GPI een beroep op doet (waaronder de anti-SLAPP wet- en regelgeving) strekken expliciet tot bescherming tegen de schade die GPI heeft geleden. Aldus is voldaan aan alle vereisten van art. 6:162 BW.
157. Op dezelfde feitelijke gronden als hiervoor genoemd geldt bovendien dat Energy Transfer misbruik maakt van recht jegens GPI ex art. 3:13 BW. De vorderingen van Energy Transfer zijn evident ongegrond, zoals hiervoor toegelicht, waardoor het instellen van de vordering, gelet op de evidente ongegrondheid ervan, in verband met de betrokken belangen van GPI achterwege had behoren te blijven.⁵⁴ Dit blijkt uit alle hiervoor geschetste feiten en omstandigheden: GPI zal om herhaling te voorkomen deze niet nogmaals opsommen.
158. Echter, in het bijzonder wijst GPI op de keuze om ook jegens GPI de Staatsrechtszaak in te stellen en tot op heden te blijven voeren nadat de RICO Act-klachten in de Federale Rechtszaak evident ongegrond werden geoordeeld, en op de publieke uitingen van Energy Transfer en zijn vertegenwoordigers die duidelijk wijzen op uitoefening van procesbevoegdheid met geen ander doel dan GPI te schaden.

7 SCHADE GPI

159. Als gevolg van de onrechtmatige handelwijze van Energy Transfer heeft GPI schade geleden, waarvoor GPI Energy Transfer bij brief van 23 juli 2024 aansprakelijk heeft gesteld. Energy Transfer heeft uitdrukkelijk geweigerd deze schade te beperken zoals GPI heeft verzocht, waardoor de schade nog elke dag toeneemt.
160. Op grond van art. 17 lid 1 Richtlijn komt deze schade, waaronder begrepen de door GPI gemaakte kosten, voor vergoeding in aanmerking. GPI vordert in deze procedure een schadevergoeding nader op te maken bij staat ex art. 612 Rv. Voor verwijzing naar de schadestaatprocedure is het voldoende dat aannemelijk is dat GPI schade heeft geleden.⁵⁵
161. Ter onderbouwing hiervan zal hierna uiteengezet worden welke schadeposten GPI heeft, waarmee GPI heeft voldaan aan haar stelplicht in dit verband.⁵⁶ Daarbij is van belang dat de omvang van deze schadeposten op dit moment nog niet vaststaat, gezien in elk geval de Staatsrechtszaak nog in volle gang is.
162. De schade bestaat uit materiële en immateriële schade. De immateriële schade is in elk geval reputatieschade (art. 6:106 sub b BW). Daarnaast is er hier ook sprake van een bijzondere

⁵⁴ HR 6 april 2012, ECLI:NL:HR:2012:BV7828, NJ 2012/233 (*Duka/Achmea*), HR 15 september 2017, ECLI:NL:HR:2017:2366 (*Alternatieve Bouw en Ontwikkelingscombinatie Wateringsveld B.V./Gedaagden*).

⁵⁵ T&C art. 612 Rv.

⁵⁶ T&C art. 612 Rv.

categorie immateriële schade, namelijk schade die voortvloeit uit het opzettelijk frustreren van een rechtspersoon met een ideëel doel. Art. 6:106 sub a BW maakt mogelijk om vergoeding van immateriële schade te vorderen als deze is toebracht met “het oogmerk zodanig nadeel toe te brengen”. Daaronder valt blijkens de toelichting van de wetgever op dit artikel onder meer:⁵⁷

“Ook kan men denken aan het opzettelijk frustreren van een rechtspersoon met een ideëel doel in de verwezenlijking daarvan, een geval dat niet steeds onder de bepaling onder b zal zijn te brengen.”

163. De belangrijkste schadeposten in dit verband zijn op dit moment als volgt te omschrijven:

- a. GPI moet als gevolg van de tegen haar aangespannen SLAPPs al jarenlang zeer significante kosten te maken voor juridische bijstand in de Verenigde Staten, eerst voor de behandeling van de Federale Rechtszaak en daarna voor de behandeling van de Staatsrechtszaak. De kosten voor de verdediging van de Staatsrechtszaak lopen nog elke dag op en zullen een nieuwe piek bereiken vanaf eind februari 2025, wanneer naar verwachting de vijf weken durende ‘jury trial’ van de Staatsrechtszaak van start zal gaan. De totale omvang van deze kosten staat nog niet vast en zal ook in belangrijke mate afhankelijk zijn van het verdere procesverloop. In de schadestaatprocedure kunnen deze kosten naar verwachting in meer detail worden bepaald.
- b. De behandeling van de SLAPPs van Energy Transfer kost talrijke medewerkers van GPI al jarenlang grote hoeveelheden tijd, die zij niet kunnen besteden aan de kerntaak van GPI (het campagnevoeren voor een groene en vreedzame toekomst). Ook hierbij geldt dat de tijdsinvestering van medewerkers van GPI nog elke dag oploopt en dat de totale omvang van deze schadepost sterk zal afhangen van het procesverloop van de Staatsrechtszaak.
- c. Naast het investeren van tijd en (salaris)kosten is GPI ook gedwongen om significante hoeveelheden geld te investeren in andere kosten die samenhangen met de al lang voortslepende SLAPP-zaken. Zo moeten GPI-medewerkers regelmatig afreizen naar de Verenigde Staten voor proceshandelingen, wat significante reis- en verblijfkosten met zich meebrengt, moet er overleg plaatsvinden met externe advocaten en aandacht besteed worden aan campagne-activiteiten die samenhangen met de zaak. Verschillende aspecten van de zaak vergen verder het inschakelen van ter zake deskundige externe experts. Ook het voeren van de onderhavige zaak brengt kosten met zich mee voor GPI.
- d. In algemene zin wordt het werk van GPI gefrustreerd en doorkruist door de Rechtszaken, op allerlei manieren. Zo gaat disproportioneel veel aandacht uit naar het werk van GPI in de Verenigde Staten door de behandeling van (momenteel) de Staatsrechtszaak, waardoor minder ruimte resteert voor het vervullen van de doelstellingen van GPI in andere delen van de wereld. Ook vergen de Rechtszaken en alle ontwikkelingen daaromheen continu overleg tussen GPI, Greenpeace US en Greenpeace Fund, dit zijn immers elk zelfstandige entiteiten met eigen besturen en bevoegdheden. Tegelijkertijd zijn er uiteraard ook sterke onderlinge banden, die onder meer bestaan uit een financiële bijdrage van GP Inc. aan GPI, waardoor bij –

⁵⁷ MvA II, Parl. Gesch. BW Boek 6, p. 380.

bijvoorbeeld – een faillissement van GP Inc., GPI ook schade zal lijden. GPI kan dit punt desgewenst nader toelichten, maar hoopt dat dit voor uw Rechtbank enige inzage biedt in de impact hoe de handelwijze van Energy Transfer (welbewust) het werk van GPI heeft gefrustreerd en blijft frustreren. Hieruit volgt met name de immateriële schade onder art. 6:106 sub a BW.

- e. De SLAPPs die Energy Transfer heeft aangespannen tegen GPI en de ernstige, ongefundeerde beschuldigingen die Energy Transfer over GPI heeft geuit leiden tot voortdurende reputatieschade aan de zijde van GPI.
164. Er is dus sprake van verschillende categorieën schade, waaronder in elk geval vermogensschade, schade door het opzettelijk frustreren van GPI en reputatieschade. Deze komen blijkens de formulering van art. 17 lid 1 Richtlijn (“the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third-country”) allen voor vergoeding in aanmerking. GPI behoudt zich het recht voor aanvullende categorieën schade c.q. schadeposten te claimen, nu het zeer wel mogelijk is dat door de voortdurende dynamiek van de Staatsrechtszaak ook andere categorieën schade en/of schadeposten zullen ontstaan dan hiervoor uiteengezet.
165. Nu gedaagden elk in grote lijnen een gelijke rol spelen in de hiervoor geschetste handelwijze en in dit dossier continu als één front naar buiten treden, ook in de communicatie, geldt dat zij hoofdelijk aansprakelijk zijn voor de door GPI geleden schade. GPI vordert dan ook een hoofdelijke veroordeling tot het betalen van schadevergoeding. Dit is al gerechtvaardigd nu gedaagden elk eiser zijn (c.q.) waren in de Federale Rechtszaak en de Staatsrechtszaak.⁵⁸ Zij hebben in deze zaken deels zich elk op verschillende grondslagen beroepen, maar daarbij geldt telkens dat deze evident ongefundeerd zijn en leiden tot een disproportionele eis tot schadevergoeding. De kern van het onrechtmatig handelen (het gezamenlijk aanspannen van SLAPPs en de handelwijze van gedaagden in dat kader) dat GPI gedaagden verwijt is dan ook identiek voor elke gedaagde.
166. Het onrechtmatige en schadelijke handelen van Energy Transfer jegens GPI is temeer kwalijk nu Energy Transfer als gezegd uitdrukkelijk heeft geweigerd haar schadeveroorzakende handelen te staken en heeft aangegeven de Staatsrechtszaak jegens GPI in volle omvang door te zetten. Dit doet uiteraard niet af aan de voortdurende verplichting voor Energy Transfer om schadebeperkend te handelen, wat zij eenvoudig kan doen door ten minste de Staatsrechtszaak in te trekken, zonder voorbehoud aansprakelijkheid te erkennen voor haar onrechtmatig handelen en in overleg te treden over de verdere afwikkeling van de zaak met GPI.
167. Uit de hiervoor omschreven vaststelling van onrechtmatig handelen en schending van verschillende grondrechten, en uit de aanzienlijke schade die GPI hierdoor heeft geleden, volgt dat de schade aan Energy Transfer kan worden toegerekend. De omvang van deze schade en eventuele andere vraagstukken rondom deze schade zullen onderwerp van debat zijn in de schadestaatprocedure.

⁵⁸ Als gezegd was in de Federale Rechtszaak Dakota Access LLC geen eiser, maar Energy Transfer Partners, L.P. (de rechtsvoorganger van Energy Transfer Operating, L.P.) als meerderheidsaandeelhouder van Dakota Access LLC wel. Dit is in de First Amended Complaint in de Federale Rechtszaak nader toegelicht door eisers: zie productie 10, par. 25.

8 TOELICHTING OP DE VORDERINGEN

168. Onder I(a) vordert GPI een verklaring voor recht dat Energy Transfer onrechtmatig heeft gehandeld door het aanspannen van de Rechtszaken tegen GPI en het in dit verband uiten van onjuiste beschuldigingen over GPI. Deze formulering weerspiegelt dat, zoals hiervoor toegelicht, de gehele handelwijze van Energy Transfer, het aanspannen van SLAPPs tegen GPI en alles daaromheen, kwalificeert als een specifieke vorm van onrechtmatig handelen jegens GPI.
169. Daarnaast vordert GPI onder I(b) een verklaring voor recht dat Energy Transfer specifiek door het aanspannen van de Rechtszaken misbruik van recht heeft gemaakt ex art. 3:13 BW en dat deze zaken *primair* kwalificeren als SLAPPs in de zin van de Richtlijn, *althans subsidiair* als ‘manifestly unfounded and abusive court proceedings’ in de zin van de Richtlijn. Voor zover uw Rechtbank dicht bij de tekst van de Richtlijn zou willen blijven in de toe te wijzen verklaring voor recht is in de subsidiaire vordering onder I(b) de term “SLAPPs” vervangen door de exacte definitie hiervan uit de Richtlijn.
170. GPI heeft een zwaarwegend belang bij toewijzing van deze verklaringen voor recht, nu zij hiermee objectief kan aantonen dat een onafhankelijke rechter de handelwijze van Energy Transfer als onrechtmatig en als misbruik van recht, inhoudende SLAPPs, heeft gekwalificeerd. Een dergelijke uitspraak zal zowel in deze zaak als in eventuele toekomstige zaken een krachtig middel tot genoegdoening vormen voor slachtoffers van SLAPPs en houdt een meer betekenisvol oordeel in dan alleen een toewijzing van schadevergoeding.
171. Onder II vordert GPI vergoeding van haar schade en verwijzing naar de schadestaatprocedure. Als gezegd heeft GPI op dit moment nog geen voldoende compleet beeld van haar totale schade: deze loopt elke dag nog op.
172. Onder III vordert GPI publicatie door Energy Transfer van een bericht op haar website met een link naar een pdf-versie van een (op kosten van Energy Transfer op te stellen) beëdigde Engelse vertaling van het in deze zaak te wijzen vonnis, zoals nader gespecificeerd in het petitum. Art. 3:296 en/of art. 6:162 en art. 6:103 BW bieden voldoende grondslag in het Nederlandse recht voor het opleggen van een dergelijke verplichting,⁵⁹ zeker in samenhang gelezen met art. 15 Richtlijn, waarin is bepaald:

“Member States shall ensure that courts or tribunals seised of abusive court proceedings against public participation may impose effective, proportionate and dissuasive penalties or other equally effective appropriate measures, including the payment of compensation for damage or the publication of the court decision, where provided for in national law, on the party who brought those proceedings.”

en overweging 42 Richtlijn:

⁵⁹ Zie in dit verband ook de toelichting van de wetgever bij art. 3:3035a lid 4 BW: “(...) aangenomen kan worden dat publicatie van een vonnis ook mogelijk is buiten de gevallen die door deze artikelen bestreken worden. Zo aan de daaraan gestelde vereisten is voldaan kan een veroordeling tot publicatie van een vonnis daarbij gebaseerd worden op artikel 296 van Boek 3 BW, of op artikel 162 jo artikel 103 van Boek 6 BW”. *Kamerstukken // 1999-2000*, 26 693, nr. 6, p. 2.

“The main objective of giving courts or tribunals the possibility of imposing penalties or other equally effective appropriate measures is to deter potential claimants from initiating abusive court proceedings against public participation. Other appropriate measures, including the payment of compensation for damage or the publication of the court decision, where provided for in national law, should be as effective as penalties”

173. GPI acht een termijn van twee weken voor het voldoen aan deze vordering redelijk. Om te voorkomen dat Energy Transfer de verplichte publicatie na enige tijd weer van haar website verwijderd vordert GPI dat Energy Transfer de publicatie online dient te houden op de plek op haar website waar het archief van persberichten is te vinden.
174. Als prikkel tot nakoming van de onder III gevorderde publicatie vordert GPI onder IV ex art. 611a Rv betaling van een dwangsom van EUR 10.000 per dag dat Energy Transfer niet of niet volledig zou voldoen aan de onder III uit te spreken veroordeling. De hoogte van deze dwangsom is mede vastgesteld in het licht van de financiële slagkracht van Energy Transfer, een bedrijf met een omzet van bijna 80 miljard dollar per jaar: de prikkel tot nakoming moet wel effectief zijn. In dit licht wijst GPI er ook op dat Energy Transfer zijn advocaatkosten voor het voeren van de Federale Rechtszaak heeft geschat op minimaal tientallen miljoenen dollars: het gaat dus om een zeer financieel draagkrachtige partij waarbij het opleggen van een hoge dwangsom gerechtvaardigd is.
175. Op grond van art. 14 en art. 17 lid 1 Richtlijn komen tot slot de volledige proceskosten van GPI in deze zaak voor vergoeding in aanmerking (vordering onder V). Het Nederlandse burgerlijke procesrecht voorziet al in deze mogelijkheid ex art. 237 lid 1 Rv en art. 3:13 en 3:15 BW, zoals de wetgever in de concept Memorie van Toelichting bij de concept Implementatiewet (productie 33, p. 11 en 24) toelicht en waar GPI zich hierbij (ook) op beroept:

“Op grond van artikel 14 van de richtlijn moet een SLAPP-doelwit de volledige kosten van vertegenwoordiging in rechte vergoed kunnen krijgen, tenzij die kosten buitensporig zijn. Hierin voorziet het Nederlandse (proces)recht. In beginsel wordt in Nederland de partij die in het ongelijk wordt gesteld, in de kosten veroordeeld (artikel 237 lid 1 Rv). Ook kan de rechter de kosten die nodeloos werden aangewend of veroorzaakt, voor rekening laten van de partij die deze kosten aanwendde of veroorzaakte. Dit biedt bij SLAPPs voldoende ruimte om in afwijking van het puntenstelsel - dat in principe geldt voor de kostenberekening - te komen tot een volledige proceskostenveroordeling. In de praktijk pleegt van deze mogelijkheid tot afwijking weinig gebruik te worden gemaakt, maar juist in gevallen van een kennelijk ongegronde vordering of misbruik van procesrecht zal snel sprake zijn van nodeloos aangewende kosten zodat naar verwachting van deze mogelijkheid mede in het licht van de richtlijn (meer) gebruik kan worden gemaakt.”

176. GPI beseft dat het toewijzen van volledige proceskosten ongebruikelijk is in de Nederlandse rechtssfeer en dat art. 14 Richtlijn primair ziet op zaken waarin doelwitten van een SLAPP gedaagde zijn. Tegelijk blijkt uit art. 14 en art. 17 van de Richtlijn, in onderlinge samenhang gelezen en in de context van de bedoeling van de Richtlijn (zoals ook duidelijk blijkt uit overweging 31), dat ook in zaken waar partijen een beroep doen op het bepaalde in art. 17 lid 1 van de Richtlijn aanspraak gemaakt kan worden op vergoeding van volledige proceskosten. In dit verband wijst GPI er op dat ook de kosten die zij voor deze procedure

heeft moeten maken duidelijk kwalificeren als “costs incurred in connection with the proceedings before the court or tribunal of the third-country” (kosten die in verband met de procedure voor het gerecht van het derde land zijn geleden). Anders zou de drempel voor het aanspraak maken op de in art. 17 lid 1 Richtlijn omschreven rechten disproportioneel hoog worden. Voor zover uw Rechtbank hier niet in zou meegaan vordert GPI *subsidiair* vergoeding van haar proceskosten op de gebruikelijke wijze.

177. De totale omvang van de proceskosten (waaronder begrepen advocaatkosten) in deze zaak staat nog niet vast. GPI zal voorafgaand aan de zitting in deze zaak een overzicht inbrengen van de tot op dat moment door haar gemaakte proceskosten, inclusief een schatting van de tot aan het vonnis nog te maken proceskosten.

9 BEKENDE VERWEREN VAN ENERGY TRANSFER

178. Energy Transfer stelt zich op het standpunt dat de rechtszaken die zij tegen GPI heeft aangespannen geen SLAPPs zouden zijn, maar een legitieme uitoefening van haar rechten onder het recht van de staat North Dakota. Verder meent Energy Transfer dat er geen juridische grondslag bestaat voor het vaststellen van haar aansprakelijkheid in het Europese, danwel Nederlandse recht.

179. Deze standpunten zijn in het voorgaande besproken en weerlegd.

10 BEWIJSAANBOD

180. Eiseres biedt, voor zover op grond van artikel 150 Rv de bewijslast op haar zou rusten, bewijs aan voor al haar stellingen, met alle middelen rechtens. Verschillende bij de Rechtszaken betrokken medewerkers van GPI kunnen in dit verband in meer detail verklaren over het procesverloop en de inhoud van de Rechtszaken, en GPI biedt nader bewijs aan middels overlegging van relevante processtukken in de Rechtszaken (voor zover toelaatbaar onder de toepasselijke regels van het Amerikaanse recht).
181. GPI meent dat het overduidelijk is dat de Federale Rechtszaak en de Staatsrechtszaak, zowel afzonderlijk als in samenhang beoordeeld, als SLAPPs kwalificeren in de zin van de Richtlijn. Daarom heeft GPI in deze dagvaarding de hoofdkenmerken van deze zaken toegelicht, wat naar haar mening volstaat voor een gedegen beoordeling van de voorliggende zaak. Mocht het echter nodig zijn kan GPI bij afzonderlijke akte of via het horen als getuige van één van haar medewerkers die bij de zaak betrokken is nadere bewijs verschaffen over de Federale Rechtszaak en/of de Staatsrechtszaak.

11 EIS

Eiseres verzoekt de rechtbank Amsterdam om bij vonnis, voor zover mogelijk uitvoerbaar bij voorraad:

- I. voor recht te verklaren dat:
 - a. De handelwijze van Energy Transfer jegens GPI, waaronder het aanspannen van de Federale Rechtszaak en de Staatsrechtszaak en het doen van onjuiste uitingen over GPI, onrechtmatig is jegens GPI; en

- b. Energy Transfer door het aanspannen van de Federale Rechtszaak en de Staatsrechtszaak misbruik van recht ex art. 3:13 BW hebben gemaakt, en dat deze rechtszaken kwalificeren als SLAPPs in de zin van de Richtlijn, *althans* als 'manifestly unfounded and abusive court proceedings' in de zin van de Richtlijn;
- II. gedaagden hoofdelijk te veroordelen tot vergoeding van de schade die GPI heeft geleden als gevolg van hun onrechtmatig handelen jegens GPI, op te maken bij staat en te vereffenen volgens de wet, één en ander te vermeerderen met de wettelijke rente, en partijen hiervoor te verwijzen naar de schadestaatprocedure;
- III. gedaagden te gebieden om binnen twee weken na betekening van het in deze zaak te wijzen vonnis:
 - a. op eigen kosten een beëdigde vertaling van het in deze zaak te wijzen vonnis in het Engels te laten opstellen en publiceren in pdf-formaat zoals hieronder gespecificeerd;
 - b. de volgende tekst te publiceren en ten minste gepubliceerd te houden als persbericht op de website van Energy Transfer <energytransfer.com>, en deze tekst publiceren en gepubliceerd te houden op de pagina 'Newsroom' van Energy Transfer <https://www.energytransfer.com/newsroom/>, met daarbij telkens een hyperlink naar de beëdigde Engelse vertaling van het in deze zaak te wijzen vonnis als bedoeld onder III (a) van deze vorderingen:

"The Court of Amsterdam, the Netherlands has found, by judgment of [date judgment], that Energy Transfer, LP, Energy Transfer Operating LP and Dakota Access, LLC ("Energy Transfer") have acted unlawfully against Greenpeace International by filing two lawsuits against Greenpeace International before the Federal and State Court of North Dakota and publicly accusing Greenpeace International, without any factual basis, of serious criminal and unlawful activities in the context of protests against the Dakota Access Pipeline.

Furthermore, the Court of Amsterdam found that the lawsuits Energy Transfer filed against Greenpeace International qualify as so-called 'Strategic Lawsuits Against Public Proceedings' or 'SLAPPs' and has ordered Energy Transfer to publish and keep published a sworn translation of its judgment on the website <energytransfer.com>. You can access this document by clicking here."

waarbij dit laatste woord 'here' in de hierboven opgenomen tekst een hyperlink bevat naar een pdf-versie van de beëdigde Engelse vertaling van het vonnis in deze zaak;
- IV. gedaagden hoofdelijk te veroordelen tot betaling van een dwangsom van EUR 10.000,- per dag dat zij niet, of niet volledig, voldoen aan de onder III uit te spreken veroordeling;
- V. gedaagden hoofdelijk te veroordelen in de volledige kosten van dit geding, inclusief nakosten, met de bepaling dat indien deze kosten niet zijn betaald binnen veertien dagen na de datum waarop het vonnis is gewezen, wettelijke rente daarover verschuldigd zal zijn, *althans subsidiair* gedaagden hoofdelijk te veroordelen in de kosten van dit geding, met de bepaling dat indien deze kosten niet zijn betaald binnen veertien dagen na de datum waarop het vonnis is gewezen, wettelijke rente daarover verschuldigd zal zijn.

Kosten exploit: € 144,47

De verhoging ex art. 10 Btag is opgevoerd, omdat eiser de btw niet kan verrekenen.

Deze zaak wordt namens Stichting Greenpeace Council behandeld door mr. E.W. Jurjens van Prakken d'Oliveira Human Rights Lawyers, ejurjens@prakkendoliveira.nl, 020 344 6200.

Exhibit C

MARQ WJINGAARDEN
FLIP SCHÜLLER
PROF. LIESBETH ZEGVELD
MARIEKE VAN EIK
WIL EIKELBOOM
DR. CHANNA SAMKALDEN
TAMARA BURUMA
BONDINE KLOOSTRA
MICHEL PESTMAN
BRECHTJE VOSSENBERG
EVA BEZEM
EMIEL
JURJENS
DR. LISA-MARIE KOMP
BARBARA VAN STRAATEN
TOM DE BOER
DR. KRIT ZEEGERS
FREDERIEKE DÖLLE
ELLES TEN VERGERT
ISA VAN KRIMPEN
DORA BROUWER
THOMAS VAN DER SOMMEN
LARAB MOHAMMAD
SHRUTI TOELSIE

ADVISORS
PROF. HANS ULRICH JESSURUN D'OLIVEIRA
PROF. TIES PRAKKEN

BY REGISTERED MAIL

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By e-mail: Media@EnergyTransfer.com
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CC:

Amsterdam, 23 July 2024
Our ref. D20231474/EJ/ej
Your ref.
Email: ejurjens@prakkendoliveira.nl

Re: Notice of liability Greenpeace International – Energy Transfer et al.

Dear Sir or Madam,

On behalf of my client Stichting Greenpeace Council, also known as Greenpeace International (hereafter: “GPI”), established in Amsterdam, the Netherlands, I inform you as follows.

This case revolves around one of the most egregious Strategic Lawsuits Against Public Participation (“SLAPP”) that is currently pending worldwide. GPI is a key target in this lawsuit.

In 2016, along with more than 500 other organisations, GPI signed an open letter about a public interest issue, namely the construction of an oil pipeline extending from North Dakota to Illinois, USA. As a result, Energy Transfer LP, Energy Transfer Operating, LP and (more recently) Dakota Access LLC (collectively “ET”), who are involved in this oil pipeline, have been suing GPI in the United States for what it claims are false and defamatory statements and other causes of action. In these cases, ET has been demanding payment of at least 300 million dollars and up to US \$ 900 million of ‘damages’ (as will be detailed further below).

GPI has not harmed ET in any way and has only exercised its right to participate in public debate. However, ET has publicly stated that its aim with these lawsuits is primarily to “send a message” and

say “you can’t do this in the United States”.¹ It has also baselessly accused GPI of being a criminal enterprise.²

GPI is sure it was and is free to exercise its right to freedom of speech in the United States in the way it has done. Unfortunately, legal proceedings in the United States are extremely costly, as ET is well aware. The lawsuits against GPI have resulted in significant costs for GPI, including costs for legal representation, and damage to its reputation as a result of ET’s serious and entirely unfounded public accusations.

In the European Union, there is growing awareness of the threat posed by SLAPPs, including SLAPPs in countries outside the EU. Recently, the Anti-SLAPP Directive entered into effect. In this Directive, it is confirmed that parties established in a EU Member State can claim all damage and costs they have suffered as a result of a SLAPP suit against them in a country outside of the EU before the courts of the country where they are established. GPI intends to do so, and for this purpose I am sending you this letter.

The actions of ET against GPI that are described in this letter are unlawful vis-à-vis GPI under (in any case) Dutch law and through this letter, GPI holds ET liable for all damage it has incurred and will incur (including costs it is incurring and continues to incur) as a result of ET’s actions.

As set out in more detail below, GPI demands that ET (i) immediately withdraw its pending court case against GPI, and (ii) fully accept liability and responsibility for payment of all damage (including costs) GPI has suffered as a result of ET’s actions.

1. Facts: actions ET against GPI and others

GPI is the coordinating body of 25 independent national and regional Greenpeace organisations around the world. These organisations independently develop and carry out their national and/or regional campaign projects, which may fit within a strategic level campaign programme outlined by GPI.³ GPI is a Netherlands-formed non-profit foundation. It is distinct from the two other Greenpeace entities which are defendants in the court cases brought by ET - Greenpeace, Inc. and Greenpeace Fund, Inc. Both entities are located in the United States.

ET owns the largest liquid petroleum and natural gas pipeline system by volume in the United States, spanning nearly 72,000 miles. ET was/is responsible for the development, permitting, construction and operation of the controversial 1,172 mile long Dakota Access oil Pipeline (“DAPL”). In 2016-2017, an Indigenous-led movement protested against the permitting and construction of DAPL.⁴

GPI had nothing to do with these protests. Its engagement in the public debate about the construction of DAPL was signing an open letter to various banks, written by the NGO BankTrack, urging the banks to “halt all further disbursements of the loan and require the project sponsor to stop construction

¹ Greenpeace USA 18 June 2018 “Too Far, Too Often”, <https://www.greenpeace.org/usa/reports/too-far-too-often/>, see reference in footnote 77.

² See for instance the amended complaint in one of the lawsuits: <https://www.greenpeace.org/usa/wp-content/uploads/2018/08/ec7208cc-20180806-etp-amended-complaint.pdf>.

³ See in more detail about GPI’s work: <https://www.greenpeace.org/international/about/structure/>.

⁴ The letter has been published by BankTrack and remains available via: [https://www.banktrack.org/download/letter from 500 organisations to 17 banks on financing dapl/161130 final letter all dapl banks 2.pdf](https://www.banktrack.org/download/letter%20from%20500%20organisations%20to%2017%20banks%20on%20financing%20dapl/161130%20final%20letter%20all%20dapl%20banks%202.pdf)

work until all outstanding issues are resolved to the full satisfaction of the Standing Rock Sioux Tribe.”⁵ This letter, sent on 30 November 2016, was signed by more than 500 organizations, including GPI.

In 2017, ET filed an extremely aggressive and clearly unfounded court case against GPI and several other defendants (including Greenpeace, Inc. and the Greenpeace Fund, Inc) in the federal District Court for the District of North Dakota (the “**Federal Lawsuit**”).⁶ In the Federal Lawsuit, ET demanded damages of “no less than \$ 300 million”, which it demanded to be “trebled” and paid “together with interest, costs and attorney’s fees”.⁷ It alleged, without any factual basis, that GPI and the other defendants were part of a criminal enterprise which purposely aimed to damage ET, as a way to raise funds.

In its publicity campaign about the court case, Energy Transfer accused GPI and the other defendants of “manufactur[ing] and disseminat[ing] false and misleading information”, “fraudulently inducing donations”, “incit[ing], fund[ing] and facilitat[ing] crimes and acts of terrorism” and called GPI and the other defendants “rogue environmental groups (...) who employ a pattern of criminal activity and a campaign of misinformation for purposes of increasing donations and advancing their political or business agendas”.⁸ To be sure: there is no basis in fact for these far-reaching allegations. The sum total of evidence against GPI is that it joined more than 500 other organisations in signing the BankTrack open letter to a number of financial institutions - a letter which caused no proven harm whatsoever to ET.

Kelcy Warren is the founder and former CEO of Energy Transfer LP and current Executive Chairman of that company. He is one of the 500 richest people in the world, with an estimated personal fortune of between 6 and 7 billion dollars.⁹ On 25 August 2017, Kelcy Warren was interviewed on CNBC as CEO of Energy Transfer about the claims in the Federal Lawsuit. The banner accompanying the interview stated: “ENERGY TRANSFER SUES GREENPEACE”. In the interview, Warren referred to Greenpeace and others as “these people” and said “I am not afraid of these people at all”. “Everybody’s afraid of these environmental groups and the fear that it may look wrong if you fight back (...) but what they did to us is wrong, and they’re going to pay for it (...) They’re going to pay for this, they’re going to pay for this”.¹⁰ He explicitly said that “this can’t be allowed to happen” and implied that the Federal Lawsuit was aimed against all acts of public participation by GPI and other groups in the United States. In September 2017, Warren was interviewed by Chris Berg at Valley News Live. In this interview, Warren

⁵ BankTrack 30 November 2016, “Global call on banks to halt loan to Dakota Access Pipeline,” available at: https://www.banktrack.org/article/global_call_on_banks_to_halt_loan_to_dakota_access_pipeline.

⁶ The entity Dakota Access LLC was not a plaintiff in the Federal Lawsuit.

⁷ Energy Transfer Equity, L.P. and Energy Transfer Partners, L.P. v Greenpeace International *et al*, First Amended Complaint Jury Trial Demand, Case No: 1:17-cv-00173.

⁸ Press release Energy Transfer 22 August 2017, “ENERGY TRANSFER FILES FEDERAL LAWSUIT AGAINST GREENPEACE INTERNATIONAL, GREENPEACE INC., GREENPEACE FUND, INC., BANKTRACK AND EARTH FIRST! FOR VIOLATION OF FEDERAL AND STATE RACKETEERING STATUTES”, <https://ir.energytransfer.com/news-releases/news-release-details/energy-transfer-files-federal-lawsuit-against-greenpeace/>.

⁹ In early June, Bloomberg listed Warren as the 399th richest person in the world; Forbes ranked him as the 483rd at the same time. See <https://www.bloomberg.com/billionaires/profiles/kelcy-l-warren/> and <https://www.bloomberg.com/billionaires/profiles/kelcy-l-warren/>.

¹⁰ CNBC Power Lunch 25 August 2017, “We were greatly harmed, lost millions of dollars: Energy Transfer Partners CEO”, <https://www.cnbc.com/video/2017/08/25/we-were-greatly-harmed-lost-millions-of-dollars-energy-transfer-partners-ceo.html>.

acknowledged that ET started the lawsuit against Greenpeace to “send a message”, and not primarily to obtain damages:¹¹

We’ve created this kind of tolerance where, oh my gosh, you can’t challenge these people in fear that someone is going to say you’re not a friend of the environment. That’s nonsense. (...) 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.

Later in the interview, Berg asked Warren: “are you trying to cease funding for organisations like Greenpeace?” Warren answered: “Absolutely”.

On 14 February 2019, the judge presiding over the Federal Lawsuit threw out ET’s case against GPI and others based on a motion to dismiss.¹² The court found the facts advanced by the plaintiffs fell “far short of what is needed” to establish the defendants had formed a criminal enterprise. It dismissed the federal claims alleged, with prejudice, and declined to exercise jurisdiction over the state law claims.¹³

Only a week later (on 21 February 2019) ET filed another case against GPI and others, this time in state court in North Dakota (the “**State Lawsuit**”). ET’s operative complaint asserts a long series of claims—including defamation, tortious interference, and a variety of property torts—against the non-profit Greenpeace defendants (including GPI) in connection with ET’s development and operation of the oil pipeline in North Dakota. In this case, ET seeks close to three hundred million dollars in damages, including alleged reputational damage, and in addition demands for exemplary damages (which can be double the amount of actual damages awarded) and attorney’s fees. There were and are still no grounds whatsoever for any of ET’s claims. However, in North Dakota state law there is no anti-SLAPP statute, and North Dakota has been described as “favorable terrain for these sorts of defamation lawsuits” for that reason.¹⁴

The State Lawsuit has been ongoing before the Morton County District Court over the past five years and is scheduled to go to jury trial in February-March 2025. ET has not been able, and will not ever be able to, show evidence of any tort committed by GPI. However, as ET has also publicly stated, that is not the point of its lawsuits against GPI. The State Lawsuit, like the Federal Lawsuit before it, is a strategic lawsuit aimed against acts of public participation:

When it comes to SLAPP suits like this one, the process itself is the punishment. The burden of time and money to defend constitutionally protected activities from such mischaracterizations

¹¹ Valley News Live 1 September 2017, “Energy Transfer Partners CEO, Kelcy Warren, says DAPL was about a money raise”, <https://www.valleynewslive.com/content/misc/Energy-Transfer-Partners-CEO-Kelcy-Warren-says-DAPL-was-about-a-money-raise-442409553.html>. At the moment of writing, this video appeared to be (possibly temporarily) unavailable to stream.

¹² United States District Court of North Dakota 14 February 2019, Case 1:17-cv-00173-BRW-CRH.

¹³ The full dismissal is available here: <https://www.greenpeace.org/usa/wp-content/uploads/2019/02/ETP.pdf>.

¹⁴ Texas Observer 25 March 2022, “Kelcy Warren’s Defamation Suit has Beto O’Rourke Spoiling For a Fight”, <https://www.texasobserver.org/kelcy-warrens-defamation-suit-has-beto-orourke-spoiling-for-a-fight/>. This article relates to a SLAPP case Warren filed against politician Beto O’Rourke, which was unsuccessful as the Texas courts found O’Rourke’s statements “non-actionable opinions”. Court of Appeals Texas, Austin 9 June 2023, NO. 03-22-00416-CV (Warren/Rourke); confirmed by the Supreme Court of Texas.

is far too high for ordinary citizens and community organizations. As a result, many will decide to keep quiet rather than risk a ruinous judgment.¹⁵

GPI notes that while this letter is specifically concerned with its position, it is of the view that the State Lawsuit clearly qualifies as a SLAPP suit against all defendants, including the other Greenpeace entities that are defendants in the State Lawsuit.

2. Legal protection against SLAPP suits in the Netherlands and Europe

The acts against GPI by ET as set out above are unlawful and qualify as an abuse of rights under Dutch civil law (Articles 6:162 and 3:13 of the Dutch Civil Code or (“DCC”)), read in conjunction with Articles 8 and 10 of the European Convention of Human Rights (“ECHR”), EU Directive 2024/1069 on protecting targets of SLAPPS, and Article 11 of the EU Charter of Fundamental Rights (“Charter”), as well as various Recommendations set out below). GPI therefore has a cause of action before the courts of the Netherlands.

GPI is established in the Netherlands, which is part of the European Union and the Council of Europe. Freedom of expression, which includes the right of the public to receive information, is guaranteed by *inter alia* Article 10 ECHR and Article 11 of the Charter. Article 8 ECHR guarantees the right to reputation, which can come into play for targets of SLAPP cases. The State of the Netherlands has a positive obligation to secure the enjoyment of the rights enshrined in (amongst others) Article 8 and 10 ECHR to everyone within its jurisdiction, and to protect this right from any infringement, including by private parties.¹⁶

Dutch civil law furthermore prohibits unlawful acts, meaning “an infringement of a right and an act or omission in violation of a duty imposed by law or of what according to unwritten law has to be regarded as proper social conduct” (Article 6:162(1) and (2) DCC). In addition, Dutch law prohibits parties from abusing their rights, including (but not limited to) by exercising a right with the sole aim of harming another party (Article 3:13 DCC).

Over the past years, SLAPPs have been recognized within the European Union as a significant threat to freedom of expression and – by extension – to democracy.¹⁷ The European Commission underlined in a Recommendation that SLAPPs can be aimed at “exhaust[ing] (...) financial and other resources” of journalists, NGOs and human rights defenders and noted: “The length of procedures, the financial pressure and the threat of criminal sanctions constitute powerful tools to intimidate and silence critical voices” (considerations, under 12).¹⁸ It recommended Member States to ensure targets of SLAPPs should be able to obtain compensation for all damage and costs incurred as a result of the SLAPP.

The European Parliament noted with concern in 2021 that SLAPPs “may also be brought against watchdogs within the Union by actors in third countries and before courts in third countries” – “third

¹⁵ Greenpeace USA 6 June 2024, “The Story of Energy Transfer’s \$300 Million Lawsuit, and Why It Matters”, <https://www.greenpeace.org/usa/energy-transfer-lawsuit-story/>.

¹⁶ Human Rights Comment by the Council of Europe Commissioner for Human Rights 27 October 2020, “Time to take action against SLAPPs” (Strategic Lawsuits against Public Participation).

¹⁷ See for instance ECtHR 15 March 2022, 2840/10 (*OOO Memo/Russia*), par. 43 and 23.

¹⁸ Commission Recommendation of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”).

countries' meaning countries which are not EU Member States.¹⁹ The Committee of Ministers of the Council of Europe in early April 2024 reiterated this. It recommended Member States to provide rules to ensure that SLAPP targets domiciled within a Council of Europe country are able to obtain compensation of damages and costs incurred in connection with a SLAPP in a third country before the court of the place where they are domiciled.²⁰

On 11 April 2024 Directive 2024/1069 on protecting targets of SLAPPs (the “**Directive**”) came into effect.²¹ The Directive aims to provide safeguards to journalists, human rights defenders and other persons engaged in public participation against SLAPPs, which are defined in the Directive as “manifestly unfounded claims or abusive court proceedings in civil matters with cross-border implications brought against natural and legal persons on account of their engagement in public participation” (art. 1 Directive).

Whether a court case qualifies as a SLAPP will depend on the facts and circumstances of the case, and the Directive expressly does not provide an exhaustive list of criteria, which must be satisfied for a court case to qualify as a SLAPP. Rather, it provides a non-exhaustive list of indications that a court case could be qualified as a SLAPP, including but not limited to the following indications (drawn from the recitals of the Directive):

1. The case is “initiated by powerful entities, for example (...) corporations (...) in an attempt to silence public debate”.
2. The case involves “an imbalance of power between the parties, with the claimant having a more powerful financial or political position than the defendants”.
3. If an imbalance of power is present, this “significantly increases the harmful effects as well as the chilling effect of court proceedings against public participation”.
4. There are “litigation tactics deployed by the claimant and used in bad faith, such as tactics relating to the choice of jurisdiction, relying on one or more fully or partially unfounded claims, making excessive claims, the use of delaying tactics or deciding to discontinue cases at a later stage of the proceedings, initiating multiple proceedings on similar matters, and incurring disproportionate costs for the defendant in the proceedings.”
5. In that context, “[t]he past conduct of the claimant and, in particular, any history of legal intimidation should also be considered when determining whether the court proceedings are abusive in nature. Those litigation tactics, which are often combined with various forms of intimidation, harassment or threats before or during the proceedings, are used by the claimant for purposes other than gaining access to justice or genuinely exercising a right and are aimed at achieving a chilling effect on public participation in relation to the matter at stake”.

¹⁹ European Parliament resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society (2021/2036(INI)).

²⁰ Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs) – regardless of the domicile of the party which filed the SLAPP suit.

²¹ Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (‘Strategic lawsuits against public participation’).

The Directive expressly recognizes the special threat posed by third-country SLAPPs, meaning cases brought against defendants in the European Union in a jurisdiction outside of the European Union, and the need for protection against such cases (considerations Directive, 43):

In the cross-border context, it is also important to recognise the threat of SLAPPs in third-countries targeting journalists, human rights defenders and other persons engaged in public participation who are domiciled in the Union. SLAPPs in third-countries may involve excessive damages being awarded against persons engaged in public participation. Court proceedings in third-countries are more complex and costly for the targets of SLAPPs. To protect democracy and the right to freedom of expression and information in the Union and to avoid the safeguards provided by this Directive being undermined by recourse to court proceedings in other jurisdictions, it is important to provide protection against manifestly unfounded claims and abusive court proceedings against public participation in third-countries.

One form of such protection is that Member States are obliged under the Directive to “ensure that the recognition and enforcement of a third-country judgment in court proceedings against public participation by a natural or legal person domiciled in a Member State is refused, if those proceedings are considered manifestly unfounded or abusive under the law of the Member State in which such recognition or enforcement is sought”.

In addition, Article 17 of the Directive establishes the right of SLAPP targets to seek compensation for all damage and costs they have incurred as a result of third-country SLAPPs before the courts or tribunals of their domicile. It provides that when a SLAPP has been brought by “a claimant domiciled outside the Union”, “in a court or tribunal of a third-country”, “against a legal person domiciled in a Member State”, that legal person may seek, in the courts or tribunals of the place where it is domiciled, compensation for the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third country. Under the facts here, GPI has the right to demand such compensation before the competent court in the Netherlands.

This right exists irrespective of whether a decision has been rendered in the case pending in the third country (recital 44 of the Directive, emphasis added):

This Directive creates a new special ground of jurisdiction in order to ensure that targets of SLAPPs domiciled in the Union have an efficient remedy available in the Union against abusive court proceedings against public participation brought in a court or tribunal of a third-country by a claimant domiciled outside the Union. It should apply irrespective of a decision having been rendered or of a decision being final, as targets of SLAPPs can suffer damage and incur costs from the start of court proceedings and possibly even without any decision being rendered, such as in the case of a withdrawal of the claim.

ET’s acts against GPI as set out above are unlawful and qualify as an abuse of rights under Dutch civil law (Articles 6:162 and 3:13 DCC, read in conjunction with Articles 8 and 10 ECHR, the Directive and Article 11 of the Charter). GPI has a cause of action against ET before the courts of the Netherlands.

3. Notice of Liability

Under reference to the criteria set out in the Directive and other sources of law, it is beyond doubt that the lawsuits ET has pursued against GPI qualify as SLAPPs:

1. The cases were initiated by ET in an attempt to silence public debate and public participation. There is objective evidence for this aim in light of the public comments of Warren, who has

stated the aim of the case is to 'make Greenpeace pay' including by aiming to 'cease its funding'. Additionally, he stated that the 'primary objective' of the case is: "to send a message, you can't do this, this is unlawful and it's not going to be tolerated in the United States". In relation to GPI, this means signing a letter in the context of public debate should apparently 'not be tolerated in the United States'.

2. There is an imbalance of power between the parties, as ET has considerably greater financial resources than GPI. This imbalance of power increases the harm and creates a chilling effect on public participation.
3. ET has deployed unjustified litigation tactics, *inter alia* by relying on entirely unfounded claims (as shown by the dismissal of the Federal Lawsuit), repeatedly starting court cases against GPI despite a lack of credible evidence against it, doing so in a jurisdiction that lacks an anti-SLAPP law, as well as making excessive claims for damages (hundreds of millions of dollars). As a result of these litigation tactics GPI has incurred disproportionate costs, which is very likely to be the aim of ET.
4. In addition to starting the Federal Lawsuit and the State Lawsuit against GPI, ET has engaged in a very aggressive PR campaign against GPI in which it has accused GPI, without any factual basis, of serious criminal misconduct. This has harmed the reputation of GPI, which is protected by Article 8 ECHR.

As a result of these acts, GPI has suffered and continues to suffer significant damage in its domicile of Amsterdam, the Netherlands. This damage includes but is not limited to:

1. significant legal fees that GPI has been forced to incur as a result of having to defend the successive lawsuits in the United States;
2. various other costs directly linked to the cases in the United States, including but not limited to travel, lodging, consultancies and employment costs for current and former GPI employees;
3. the significant amount of time that some GPI employees have had to invest in dealing with this case over the years while not campaigning for a "green and peaceful future", which is GPI's core mission;²²
4. reputational damage as a result of the clearly unfounded, publicly stated allegations of ET against GPI of *inter alia* involvement in 'terrorism' and 'criminal activity'.

In addition, GPI continues to suffer significant damage as a result of ET's actions, in particular because ET chooses to continue the State Lawsuit (a clear example of a SLAPP case) against GPI.

By way of this letter GPI provides notice that it holds each of the ET entities jointly and severally liable for all damage it suffers as a result of their actions described herein. Insofar as relevant, this letter interrupts any applicable statute of limitations.

The ET entities are bound to, and still can, limit this damage. Therefore, I hereby summon the ET entities to confirm to me in writing by 14 August 2024 that they shall:

- I. **immediately withdraw all demands against GPI** in the State Lawsuit, and take no further legal actions against GPI;
- II. **unreservedly accept liability and responsibility for payment of all damage (including costs)** GPI has suffered as a result of ET's actions.

²² Greenpeace International "About Us", <https://www.greenpeace.org/international/about/?>.

If all ET entities unreservedly and timely agree with these demands, GPI is willing to enter into negotiations on the amount of damages ET must pay GPI and the modalities of such payments.

GPI reserves all rights.

Kind regards,



Emiel Jurjens

Exhibit D

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Jury delivers verdict finding Greenpeace entities liable for more than US\$660 million in Energy Transfer SLAPP trial



Greenpeace International

19 Mar 2025 • 2 min read



Free speech and right to protest on the line in the United States.

Mandan, North Dakota — A Morton County jury of nine reached a verdict in Energy Transfer's meritless lawsuit against Greenpeace entities in the US (Greenpeace Inc, Greenpeace Fund), and Greenpeace International, finding the entities liable for more than US\$660 million, today. Big Oil Bullies around the world will continue to try to silence free speech and peaceful protest, but the fight against Energy Transfer's meritless SLAPP lawsuit is not over.

"We are witnessing a disastrous return to the reckless behaviour that fuelled the climate crisis, deepened environmental racism, and put fossil fuel profits over public health and a liveable planet. The previous Trump administration spent four years dismantling protections for clean air, water, and Indigenous sovereignty, and now along with its allies wants to finish the job by silencing protest. We will not back down. We will not be silenced," said Mads Christensen, Greenpeace International Executive Director.


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be concerned about the future of the First Amendment, and lawsuits like this aimed at destroying our rights to peaceful protest and free speech. These rights are critical for any work toward ensuring justice – and that’s why we will continue fighting back together, in solidarity. While Big Oil bullies can try to stop a single group, they can’t stop a movement.”

Energy Transfer’s lawsuits are clear-cut examples of SLAPPs — lawsuits attempting to bury nonprofits and activists in legal fees, push them towards bankruptcy and ultimately silence dissent.[1] Big Oil companies Shell, Total, and ENI have also filed SLAPPs against Greenpeace entities in recent years.[2] A couple of these cases have been successfully stopped in their tracks. This includes Greenpeace France successfully defeating TotalEnergies’ SLAPP on 28 March 2024, and Greenpeace UK and Greenpeace International forcing Shell to back down from its SLAPP on 10 December 2024.

“Energy Transfer hasn’t heard the last of us in this fight. We’re just getting started with our anti-SLAPP lawsuit against Energy Transfer’s attacks on free speech and peaceful protest. We will see Energy Transfer in court this July in the Netherlands. We will not back down. We will not be silenced,” said Greenpeace International General Counsel Kristin Casper.

In February 2025, GPI initiated the first test of the European Union’s anti-SLAPP Directive by filing a lawsuit in Dutch court against ET.[3] GPI seeks to recover all damages and costs it has suffered as a result of ET’s back-to-back, meritless lawsuits demanding hundreds of millions of dollars against GPI and the Greenpeace organisations in the US.

ENDS

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what was needed to establish a large enterprise. The federal court did not decide on the state law so ET promptly filed a new case in a North Dakota state court with these and other state law claims.

2. [A report by the Coalition Against SLAPPs in Europe \(CASE\) documented 1049 SLAPP suits in Europe in the period 2010-2023, with 166 lawsuits initiated in 2023.](#)
3. [Greenpeace International files lawsuit against Energy Transfer in first use of EU anti-SLAPP Directive](#)

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Exhibit E



Stories Greenpeace

Greenpeace vs. Energy Transfer's SLAPP: What happens after the North Dakota trial?



Chris Greenberg

1 Apr 2025 • 5 min read



An interview with Greenpeace International General Counsel Kristin Casper

Onward. Because we will not back down. We will not be silenced.

The fight against Energy Transfer's SLAPP continues — and it is far from over. The stakes of this bullying lawsuit by the Texas-based Big Oil company behind the infamous Dakota Access Pipeline are too high to rest until justice is served. We will not back down, we will keep going, together.

The lawsuits filed by Energy Transfer (ET) against Greenpeace International (GPI) and two Greenpeace entities in the United States (Greenpeace Inc., and Greenpeace Fund) since 2017 are clear-cut examples of SLAPPs (Strategic Lawsuits Against Public Participation). Like all SLAPPs, ET's lawsuits have been an attempt to bury nonprofits and activists in legal fees, push them towards bankruptcy, and ultimately silence dissent. Not only does Energy Transfer's SLAPP attempt to erase the Indigenous leadership of the Standing Rock



The absurd US\$ 660 million jury verdict against Greenpeace entities in North Dakota made news, but this fight is bigger than the Greenpeace network. With the overwhelming support of allies all around the world, the defence against Energy Transfer's bullying tactics will continue for as long as it takes to secure the freedoms we all need to deliver a green, just and peaceful future for all. After nearly a decade of defending these SLAPPs, the Greenpeace Legal departments are prepared to continue as long as it takes!

To get a better understanding of the legal process and next steps of how the jury verdict in North Dakota fits into the ongoing legal fight against Energy Transfer's SLAPP, let's ask a few questions to Greenpeace International's General Counsel, Kristin Casper:

Is this fight over?

Kristin Casper: Absolutely not, this fight is far from over. Big Oil thinks they can bully us into silence, but we won't be silenced.

In this fight with Energy Transfer, we know the facts are on our side.

The Greenpeace entities in the US have already announced an intention to appeal, in the event that the trial court does not itself overrule the jury's verdict. Greenpeace International is weighing all legal options, including appeal, to challenge this wrongful SLAPP suit by Energy Transfer. We believe we have many and strong grounds for appeal based on how the trial was conducted.

At this moment, we are preparing legal filings that call for this North Dakota verdict to be overturned. Meanwhile, in Europe, Greenpeace International has already filed an anti-SLAPP lawsuit in Dutch court, to recover all damages and costs suffered as a result of ET's back-to-back SLAPP lawsuits against us, and we are looking forward to seeing Energy Transfer in court.

This isn't just a fight for Greenpeace defendants: it's a fight about the protection of fundamental rights for everyone. We are committed to our values, such as nonviolence, independence, and promotion of solutions. We won't back down from them. This is the kind of fight that we were made for.

GREENPEACE

follows, but so does a drive to correct a wrong. That said, we knew going into this trial that the deck was unjustly stacked against us. This case should have been thrown out long before it ever made its way to a jury trial, as a matter of law.

What happens in Morton County after the jury verdict?

KC: The trial court must decide whether to confirm, revise, or vacate the verdict. Generally, the decision can only be appealed once a final judgment by the trial court is entered.

Why was Morton County the wrong place for this case to be tried?

KC: The community in Morton County should not have had to bear the burden of this case. Every judge in this district recused themselves from presiding over the case. To fill the gap, the court had to bring in a judge from another district. The case should have been dismissed but if a trial were to happen at all, it should have been moved to another venue to ensure the fairness of the proceedings.



The Morton County Memorial Courthouse. © Tim Aubry / Greenpeace



KC: There are very strong grounds for appeal. There have been so many extremely prejudicial errors in these proceedings that the question is rather where we should start.

But just to name a few, here are some potential grounds for appeal, by way of example:

- The District Court's lack of jurisdiction over Greenpeace International;
- The lack of evidence to support key findings;
- The exclusion of key evidence supporting the defense;
- The inclusion of irrelevant and prejudicial evidence; and
- Ongoing concerns about the fairness and impartiality of the jury and the denial of requests for a change in venue.

You can get a feel for our strong arguments by reading GPI's motion for summary judgment, which was denied without any substantive reasoning.

Do Greenpeace entities really have to pay US\$660 million?

KC: No. Nor could they. Greenpeace entities don't have that kind of money. There is no scenario in which Energy Transfer gets paid this ridiculous amount.

But also, there are many legal steps between this verdict and even the potential enforcement of it, and justice and the facts are on our side. That's why Greenpeace International has brought a suit against Energy Transfer in the Netherlands: showing that, as a result of their abusive lawsuits, it is actually Energy Transfer that owes Greenpeace International compensation.

We are prepared to take this fight every step of the way, and we are confident in our ability to correct the record and be made whole.

Why is Greenpeace International suing Energy Transfer in the Netherlands?



damages and costs it has suffered as a result of ETS back-to-back SLAPP lawsuits demanding Greenpeace International and the Greenpeace entities in the United States pay hundreds of millions of dollars in damages. The first preliminary hearing in Greenpeace International's anti-SLAPP suit against Energy Transfer is set for July 2, 2025.

How long might it take for the Dutch case and US appeal(s) to play out?

KC: We don't know at this point. But in general, legal proceedings take a long time.

In the US, the appeal to the North Dakota Supreme Court may not even be the end of the legal proceedings. This legal battle with Energy Transfer has already been going on for upwards of eight years (since 2017), but however long it takes, is how long we will stay strong.

The goal of SLAPP suits is precisely that: to tie up resources, to wear us down, and pull us away from continuing to pursue our campaign goals: but unlike many smaller organisations and individuals that face such tactics, Greenpeace International is built to withstand this pressure: our campaigns are as big and bold and impactful as ever before.

Even while representatives from the Greenpeace parties were present in Mandan, North Dakota for the duration of the trial, the Greenpeace ship Rainbow Warrior was being welcomed back to the Marshall Islands to start a six-week mission around the Pacific nation to elevate calls for nuclear and climate justice; and support independent scientific research into the impacts of decades-long nuclear weapons testing by the US government. Forty years earlier, Greenpeace crew evacuated over 300 people from the Rongelap atoll to Mejjatto island, after toxic nuclear fallout from the Castle Bravo test rendered their ancestral lands uninhabitable. Across decades and despite many setbacks, the work of the Greenpeace movement continues.

Do you expect to win?

KC: Our goal has always been bigger: our fight is for the hearts and minds of people to ensure the sustainability of life in all its diversity

GREENPEACE

#EnergyTransferSLAPP

About the author



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Chris Greenberg is a Managing Editor for the Americas Communications Hub at Greenpeace International, based in Brooklyn, New York.

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Greenpeace International 2025

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Exhibit F

11:26:10 16 We will be in recess until 12:30.

11:26:13 17 (The jury exited the courtroom.)

11:26:41 18 (A break was taken at 11:26 p.m.)

12:22:16 19 (The jury entered the courtroom.)

12:23:49 20 THE COURT: South Central Judicial

12:23:52 21 District Court is back in session in 30-2019-CV-180,

12:24:00 22 Energy Transfer v. Greenpeace. We had concluded part

12:24:08 23 of the defendant's closing statements.

12:24:11 24 Ms. DeThomas?

12:24:14 25 MS. DeTHOMAS: Thank you, Your Honor.

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12:24:27 1 So good afternoon. Thank you. I want to just

12:24:43 2 begin again by saying my name is Courtney DeThomas, and

12:24:48 3 I'm proud to represent Stichting Greenpeace Council or

12:24:52 4 Greenpeace International.

12:24:52 5 I'd also like to begin to thank you, because I

12:24:56 6 know it's been a long trial, a little shorter than we

12:24:59 7 expected, but still a long time, and we've asked a lot

12:25:01 8 from you. So it's not lost on us that being here is

12:25:05 9 taking you away from your friends, your families, your

12:25:08 10 kids, your job and your day to day.

12:25:10 11 So I'm thankful, but frankly I'm very upset,

12:25:13 12 and I was getting more so listening to all the mud that

12:25:16 13 was being slung at Greenpeace International during

12:25:18 14 plaintiffs' closing statement. And I'm upset because

12:25:21 15 plaintiffs' entire case against Greenpeace
12:25:24 16 International, the weeks and days and hours of
12:25:27 17 testimony that you guys were all required to sit here
12:25:29 18 and listen because of their lawsuit, and all that they
12:25:34 19 have been able to prove about Greenpeace International.
12:25:34 20 As I told you on the first day when I stood up here and
12:25:39 21 spoke to all of you, they signed their name to one
12:25:41 22 letter along with more than 500 other organizations
12:25:45 23 from more than 50 countries. And it was a letter that
12:25:47 24 they believed to be true, and they had good reason to.
12:25:51 25 And for that, plaintiffs feel entitled to a \$300

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12:25:57 1 million windfall. And not only that, they're padding
12:25:57 2 their bills with costs and expenses that has absolutely
12:26:00 3 nothing to do with the protests, North Dakota, the
12:26:03 4 pipeline, this letter or my client.
12:26:07 5 And what's become very clear to me over the
12:26:10 6 course of this trial and maybe to you, too, is that
12:26:13 7 until 2016 plaintiffs were pretty used to getting that
12:26:16 8 you are way. They don't like being told no, slow down,
12:26:20 9 consider it, wait. So plaintiffs didn't like that the
12:26:23 10 Standing Rock Sioux Tribe had deep concerns about the
12:26:26 11 pipeline and the lack of an environmental impact
12:26:30 12 statement or that they told the U.S. Army Corps of
12:26:32 13 Engineers as much. And by March 7, 2016, they -- you

12:26:38 14 saw Mr. Jack showed you this e-mail as well, they were
12:26:42 15 referring to the Standing Rock Sioux Tribe as their
12:26:44 16 greatest adversary on the project, when in fact the
12:26:48 17 evidence is that it was -- that Mr. Mahmoud and Energy
12:26:52 18 Transfer's condescending attitudes towards the tribe
12:26:55 19 and towards the U.S. Army Corps of Engineers that was
12:26:58 20 slowing things down.

12:27:00 21 By November 15, 2016, so before Greenpeace
12:27:07 22 International signed the BankTrack letter, Energy
12:27:09 23 Transfer issued a press release blaming political
12:27:12 24 interference for their delays. And by the end of the
12:27:15 25 year, December 4, 2016, Energy Transfer was calling

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12:27:19 1 Obama -- the Obama Administration's decision not to
12:27:22 2 issue the easement a purely political action. They did
12:27:27 3 not like that the aggressive timeline that they
12:27:30 4 themselves set for the construction of their pipeline
12:27:32 5 didn't proceed precisely as planned even though anyone
12:27:36 6 that has ever gone flew a home renovation knows that
12:27:39 7 building permits are not always right when you want
12:27:43 8 them.

12:27:44 9 So when things went sideways on the DAPL
12:27:48 10 project after they decided to reroute it, what did
12:27:51 11 plaintiffs do? Did they accept any responsibility for
12:27:54 12 their own role in the escalation of the protest? No.

12:27:58 13 When on September 3, 2016 they bulldozed through a
12:28:02 14 location that the Standing Rock Sioux Tribe had told a
12:28:05 15 court of law in a sworn statement just a day before
12:28:08 16 contained sacral cultural and burial sites, did they
12:28:13 17 show any respect for their neighbors or any
12:28:15 18 understanding of how immediately moving up the
12:28:18 19 bulldozers to that spot might be perceived by the
12:28:21 20 tribe. Even if they didn't believe the tribe -- and we
12:28:24 21 know they didn't, they called it a bunch of
12:28:25 22 fabrication, a story that some guy named Mentz made
12:28:29 23 up -- wouldn't a little patience have at least gone a
12:28:32 24 long way in deescalating the tensions and the
12:28:34 25 disruptions that those protests ultimately brought to

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12:28:36 1 your community?
12:28:38 2 But no, instead, they threw a tantrum and they
12:28:42 3 play a blame game. They blamed the police, they
12:28:46 4 called -- yeah, the sheriff's already waiving a
12:28:49 5 surrender flag as well, a brilliant group of lazy,
12:28:52 6 cowardly mother fuckers, at least now we know.
12:28:56 7 That's the tenor that they were bringing to
12:28:58 8 this. They blamed the tribe. They even sued their
12:29:03 9 chief -- their chairman, excuse me. And they blamed
12:29:07 10 politics. Purely political actions. And now they're
12:29:11 11 blaming Greenpeace International for just about every

12:29:13 12 expense that they did not budget for on their project
12:29:16 13 by putting inflammatory manipulative evidence in front
12:29:21 14 of you, they're gas lighting you. Things like taking
12:29:24 15 facts and statements out of chronological order, trying
12:29:26 16 to rewrite the allegedly defamatory statements. You
12:29:29 17 heard a lot about digging up dead boats. Not one of
12:29:33 18 the statements that we are in this courtroom forever
12:29:35 19 said that. And it also completely disregards the
12:29:38 20 testimony of Expert Braun who talked about the
12:29:42 21 different conceptions that Standing Rock Sioux Tribe
12:29:45 22 had.

12:29:46 23 They also throw up a lot of big numbers when
12:29:49 24 buried in there are a lot of unrelated expenses and
12:29:53 25 charges. So be very careful when you look at those.

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12:29:56 1 They put up a lot of inflammatory pictures that are
12:30:00 2 entirely unconnected to anyone from Greenpeace
12:30:02 3 International. They're counting on you to be angry to
12:30:04 4 distract you from the facts, and that is not the oath
12:30:06 5 that you took as jurors, and don't prove them right.
12:30:11 6 So when I stood up here a few weeks ago at the
12:30:15 7 beginning of this case I made some promises to you. I
12:30:18 8 told you that you wouldn't see a shred of anyone that
12:30:21 9 anyone from Greenpeace International was present in
12:30:23 10 North Dakota at the 2016 Standing Rock protests, and

12:30:26 11 you didn't. They don't even dispute that. They put up
12:30:30 12 dozens and dozens of witnesses during the case, and
12:30:33 13 they've showed you literally stacks of documents over
12:30:36 14 the past few weeks and not one of those witnesses or
12:30:39 15 one of those documents identified anyone that was
12:30:41 16 employed by Greenpeace International being at Standing
12:30:44 17 Rock in 2016. There's not a single piece of evidence
12:30:47 18 that Greenpeace International ever touched a piece of
12:30:50 19 construction equipment, entered land or interfered with
12:30:55 20 Dakota Access's construction site. They weren't even
12:30:57 21 there. It's common sense, you need to be physically
12:31:00 22 present to set foot on land, interfere with property
12:31:03 23 that belongs to someone else. And there's also no
12:31:06 24 evidence that Greenpeace International caused, helped
12:31:09 25 or funded anyone to do any of those things.

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12:31:13 1 I also promised you that you wouldn't see a
12:31:19 2 shred of evidence that Greenpeace International
12:31:22 3 assisted or agreed to assist in anyone causing property
12:31:25 4 damages or wrongs in North Dakota and you didn't.
12:31:27 5 Plaintiff didn't show you a single piece of evidence or
12:31:29 6 present you with a single witness who said that anyone
12:31:31 7 from Greenpeace International substantially assisted
12:31:35 8 any acts of trespass nuisance, provided any people,
12:31:40 9 money or supplies to the 2016 DAPL protest or for any

12:31:43 10 actions in 2016 in Standing Rock or agreed to do
12:31:46 11 something wrong in North Dakota or really anywhere for
12:31:49 12 that matter. And this means that all of their aiding
12:31:51 13 and abetting and conspiracy claims must fail. They are
12:31:55 14 not a substantial factor and there was no agreement to
12:31:59 15 do something wrong.

12:31:59 16 Instead the evidence is that in 2016 no one
12:32:03 17 from Greenpeace International was in North Dakota and
12:32:05 18 neither DAPL nor Energy Transfer nor Dakota Access nor
12:32:10 19 oil and gas pipelines of any sort whatsoever are the
12:32:15 20 subject of any Greenpeace International global protest
12:32:20 21 or focus. In fact, the evidence is, and I showed you
12:32:24 22 this when I first spoke to you that the first
12:32:28 23 Greenpeace International knew about Energy Transfer or
12:32:30 24 Greenpeace Inc.'s presence at Standing Rock in 2016 was
12:32:32 25 an e-mail from Greenpeace Inc. on October 28, 2016

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12:32:36 1 asking to amplify and show solidarity. And now you
12:32:40 2 heard Mr. Christensen sit up here and testify that that
12:32:44 3 meant showing support for the Standing Rock Sioux
12:32:46 4 Tribe's protest, their efforts. And what happened?
12:32:49 5 Maybe some Tweets and some Facebook posts. Is that a
12:32:53 6 conspiracy? Whatever your opinions, does it make any
12:32:56 7 sense to you that Greenpeace International should be on
12:32:58 8 the hook for more than -- for at least 300 million

12:33:02 9 dollars for that when it caused no harm?

12:33:04 10 You know, I stood up here and I found it really

12:33:07 11 interesting. When plaintiffs put up that picture of

12:33:10 12 the protest there was a line of police, you know,

12:33:12 13 facing the protesters, he said they were standing in

12:33:15 14 solidarity together in that picture on the road. So

12:33:18 15 were they conspiring against the protesters? Of course

12:33:23 16 not, it's ridiculous. The only evidence plaintiff

12:33:26 17 showed you of Greenpeace International support for the

12:33:29 18 protest was manipulative and misleading. And I'll give

12:33:33 19 you just a couple of examples.

12:33:34 20 They pointed to grant money authorized as part

12:33:39 21 of Greenpeace International's defense against a 2017

12:33:41 22 lawsuit that plaintiffs brought against Greenpeace

12:33:45 23 International and the other Greenpeace defendants. It

12:33:47 24 was a defensive response to Energy Transfer's first

12:33:50 25 attempt to sue Greenpeace International and lump them

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12:33:53 1 altogether with all the other Greenpeace defendants

12:33:57 2 based on the same statements and the BankTrack letter

12:33:59 3 they're suing for again in this case. So the only

12:34:01 4 money that Greenpeace International -- from Greenpeace

12:34:04 5 International that plaintiffs were able to point to

12:34:07 6 that was even related to Energy Transfer -- this is

12:34:09 7 that pipeline DPT project they flashed in front of

12:34:13 8 you -- it was in defense of a different lawsuit years

12:34:15 9 later. That money did not travel back in time to 2016

12:34:18 10 to support the protest.

12:34:20 11 Plaintiffs also showed you one e-mail with

12:34:24 12 Greenpeace Nordic employees discussing their advocacy

12:34:27 13 efforts and supposedly taking credit for the actions of

12:34:30 14 a Norwegian bank even though, again, Greenpeace Nordic

12:34:34 15 is not a defend in this case and have not alleged a

12:34:37 16 conspiracy with any other Greenpeace NRO except for

12:34:41 17 Greenpeace Inc. and Fund who are here. And

12:34:43 18 Mr. Christensen testified those advocacy efforts were

12:34:47 19 entirely consistent with Greenpeace Nordic's efforts to

12:34:49 20 make sure that those banks did their due diligence,

12:34:52 21 that they went back to the equator principles. There's

12:34:55 22 absolutely nothing wrong with that. And the idea of

12:34:58 23 taking credit -- Mr. Jack referenced this -- and I

12:35:00 24 believe expert Neil Miltonberger said it best in his

12:35:03 25 testimony, he said when the Cubs win the World Series

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12:35:06 1 and you say we won, it doesn't mean you actually were

12:35:09 2 the cause of the Cubs winning the World Series just

12:35:13 3 because you were happy with that result.

12:35:15 4 I'll give you a final example. They throw

12:35:18 5 statements by Lilian Molina up there. She was a

12:35:21 6 lower-level Greenpeace Inc. employee. She's speaking

12:35:24 7 about things after the fact and was in no position to
12:35:27 8 have any sort of particular understanding of anything
12:35:28 9 Greenpeace did, Greenpeace International did or didn't
12:35:31 10 do. That's all they can point to in those 900,000
12:35:35 11 document that is they like to talk about, those stacks
12:35:38 12 of documents.
12:35:38 13 It feels ridiculous to even say it, but
12:35:43 14 plaintiffs would have you leave you here believing that
12:35:47 15 Greenpeace International is some dark conspiratorial
12:35:49 16 network as little cells that are activated and work
12:35:52 17 together and organize as one organize anymore, and now
12:35:55 18 I heard that they're the Mafia, when instead what they
12:35:58 19 actually are, are a coordinating body -- for Greenpeace
12:36:02 20 International is actually a coordinating body for 25
12:36:04 21 other like-minded non-profits around the world with
12:36:07 22 Quaker origins dedicated to promoting solutions that
12:36:11 23 can protect life on the planet and its diversity for
12:36:15 24 the benefit of future generations, for our babies and
12:36:20 25 grandkids.

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12:36:21 1 The evidence that you heard from
12:36:23 2 Mr. Christensen, the executive director who is in the
12:36:26 3 best position to know how the organization works is
12:36:29 4 that unlike Greenpeace Inc. and Fund, Greenpeace is
12:36:32 5 located and registered in Amsterdam, has its own

12:36:36 6 employees located mostly in Amsterdam, it does not
12:36:39 7 approve public statements, budgets or actions of the 25
12:36:43 8 of the nonprofit organizations around the world. They
12:36:47 9 share core values, nonviolence, independence, promoting
12:36:52 10 solutions. Greenpeace International licenses the
12:36:55 11 Greenpeace name, they facilitate conversations and
12:36:58 12 identify top line tenure objectives for global program
12:37:03 13 work. And of course they have some consulting and
12:37:06 14 oversight powers of the other non-profits, some limited
12:37:10 15 veto powers to ensure transparency across the network.
12:37:13 16 For instance, it polices that all the separate NROs are
12:37:16 17 acting consistent with those core values, the values
12:37:19 18 like nonviolence, and if they don't, they're out.
12:37:22 19 I made a final promise to you when I stood up
12:37:27 20 here at the beginning of the case and I promised that
12:37:29 21 you wouldn't see a shred of evidence that Greenpeace
12:37:32 22 International made any statements that it knew were
12:37:33 23 false or that caused any bank or person to take any
12:37:36 24 action with respect to DAPL. And you did not. The
12:37:40 25 November 30th BankTrack letter is the only writing that

12:37:45 1 plaintiffs allege Greenpeace International defamed them
12:37:48 2 with. And only as to two short statements in it, its
12:37:52 3 statements four and five in your verdict form.
12:37:55 4 Plaintiffs want you to believe that this Greenpeace

12:37:58 5 International signature was the only one that mattered,
12:38:00 6 the only one that was on there. When in reality, there
12:38:03 7 was more than 500 organizations that signed it, and the
12:38:06 8 signature was buried on the ninth page.

12:38:09 9 The letter was written by a well regarded Dutch
12:38:12 10 organization known for tracking and monitoring and
12:38:14 11 trying to hold banks accountable to the activities that
12:38:17 12 they finance. And Greenpeace International, you heard
12:38:20 13 testimony they signed many letters, at least a dozen
12:38:22 14 before, with BankTrack, and they knew them to be a
12:38:27 15 reliable source.

12:38:28 16 And by November 30th, 2016 when this letter was
12:38:32 17 signed, thousands of protesters were already at
12:38:34 18 Standing Rock. You also heard testimony that before
12:38:38 19 signing the letter, they carefully followed their own
12:38:42 20 sign-on procedures, they verified and made sure that it
12:38:46 21 was being supported by a reliable credible sources, and
12:38:49 22 Mr. Christensen told you why. Credibility is their
12:38:53 23 most valuable asset for Greenpeace International, and
12:38:55 24 he also testified to the very thorough vetting process
12:38:58 25 the letter went through.

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12:38:59 1 And if this trial has proven anything, it's
12:39:02 2 that people can have a lot of different opinions about
12:39:05 3 statements, about violations of land titles and

12:39:08 4 desecration of cultural sites, and that is absolutely
12:39:13 5 okay. It is your right, it is Greenpeace
12:39:15 6 International's right, because opinions cannot be the
12:39:17 7 basis for defamation. Let's be clear, there's
12:39:22 8 absolutely nothing unusual or wrong about sending
12:39:24 9 advocacy letters to banks that you believe for good
12:39:27 10 reason to believe truthful. It is a matter of free
12:39:31 11 speech and free expression. It's what makes our
12:39:33 12 country great. Greenpeace International does it so
12:39:37 13 often that Mr. Christensen couldn't even say exactly
12:39:40 14 how many times a day they do it, but he said it's not a
12:39:42 15 few.

12:39:42 16 Plaintiffs also admit that they engaged in
12:39:45 17 lobbying and advocacy. They hired Mr. Ingols, a
12:39:49 18 professional DC lobbyist, to help them on their
12:39:52 19 project. There's nothing wrong with that.

12:39:54 20 This particular letter reminded the banks that
12:39:57 21 the DAPL project was subject to the equator principles.
12:40:01 22 And Mr. Christensen explained that to you, they're a
12:40:03 23 set of voluntary principles that the banks committed to
12:40:06 24 and that provided procedures and guidelines on to
12:40:09 25 manage environmental issues and social issues in

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12:40:12 1 particular.

12:40:13 2 What the banks do in response to up to them.

12:40:16 3 Banks made decisions based on protecting their money
12:40:18 4 and their investments, not based on what Greenpeace
12:40:21 5 International has to say. It is money that makes the
12:40:24 6 world go round. Mr. Christensen said it himself. The
12:40:28 7 he knows this. You also heard video testimony from
12:40:31 8 Mr. Keith Darby whose clients are the financial lenders
12:40:35 9 for DAPL. And he told you that a failure to conform
12:40:39 10 with the Equator Principles could prevent a project
12:40:42 11 like DAPL from being funded.

12:40:46 12 Greenpeace International is also far from the
12:40:49 13 first one to make these claims, the Standing Rock Sioux
12:40:51 14 Tribe being the most obvious and with the most
12:40:53 15 authority to speak on the issue of what is cultural
12:40:56 16 significant to them. And Mr. Weil testified that
12:41:01 17 before the first allegedly defamatory statement in this
12:41:04 18 case was made, 140 separate publishes had already
12:41:08 19 published 88 similar tribal land statements, 79 similar
12:41:12 20 desecration statements and 59 statements referring to
12:41:15 21 use of force. As he put it, it was old news, and
12:41:19 22 anything Greenpeace International said was not the
12:41:21 23 cause of harm to Energy Transfer 's reputation.

12:41:25 24 The whole idea is ridiculous. Before
12:41:29 25 Greenpeace International signed the BankTrack letter,

12:41:33 1 Energy Transfer was already spending money to address

12:41:35 2 the public relations hole it had dug itself with the
12:41:38 3 way it handled the tribe and the early protests.
12:41:42 4 The statements in the November 30th BankTrack
12:41:45 5 letter were entirely consistent, almost word for word
12:41:48 6 with the United Nations report from Chief Edward John
12:41:51 7 who personally visited Standing Rock and spoke to the
12:41:54 8 Standing Rock Sioux Tribe elders. And I find it so
12:41:57 9 interesting that we question his authority. He is an
12:42:00 10 indigenous leader trusted by the United Nations who
12:42:03 11 went there and saw what he saw first hand and reported
12:42:06 12 back. I think that's incredibly credible source.
12:42:10 13 First hand accounts. And what did he say in
12:42:19 14 there. He said regardless it's clear to me that the
12:42:22 15 project has and will adversely impact the Standing Rock
12:42:24 16 sewer and their waters specifically as well as
12:42:27 17 cultural, spiritual, sacred and ancient sites on their
12:42:31 18 land and in their territory. That was consistent with
12:42:33 19 the statements put out by the Standing Rock tribe on
12:42:36 20 the issues of their land and cultural and sacred sites.
12:42:40 21 And plus, Greenpeace International never
12:42:43 22 actually published or posted this letter. BankTrack
12:42:45 23 did. There's no evidence it was communicated to anyone
12:42:49 24 at any bank who believed the statements to be
12:42:51 25 defamatory. They need to prove that. And perhaps most

12:42:57 1 importantly, there's no evidence that this letter
12:43:00 2 impacted plaintiffs' reputation or DAPL's refinancing
12:43:04 3 in any way. Plaintiffs are required to prove that to
12:43:10 4 establish defamation. But they don't have one single
12:43:13 5 witness from any of the banks that the letter come here
12:43:17 6 and say that. I told you when this case started that
12:43:20 7 they wouldn't. Not one single bank witness told you
12:43:23 8 that they received it, read it or relied on it. They
12:43:27 9 had five years to find somebody to sit in this booth
12:43:29 10 and talk to you, and they couldn't.

12:43:31 11 Appeared Mr. Cox told you if no witness came
12:43:35 12 here that that testimony would have been negative. It
12:43:37 13 is their burden to prove their case. Instead, you
12:43:42 14 heard video testimony from Mr. Keith Darby again whose
12:43:45 15 company Lumos Consulting prepared a bond report for the
12:43:48 16 refinancing, and he told you precisely the opposite.
12:43:52 17 He said no, that wasn't brought to our attention by the
12:43:55 18 lenders. Was it brought to your attention by Energy
12:43:58 19 Transfer? No. Would that information have been
12:44:01 20 material to Lumos's assessment of whether the pipeline
12:44:04 21 complied with the Equator Principles? We would have
12:44:06 22 looked at it, but I doubt it would have changed our
12:44:09 23 opinion.

12:44:09 24 You heard testimony from Mr. John Reed, an
12:44:14 25 expert in the field of financing energy infrastructure.

12:44:17 1 He testified that none of the statements that any
12:44:21 2 Greenpeace entities had any impact on bank decisions.
12:44:24 3 He is asked, the four decisions those banks made to
12:44:27 4 leave and sell their original was a result of the
12:44:30 5 political pressure that was being applied because of
12:44:33 6 statements Greenpeace was making and because of the
12:44:35 7 protest, he said no, I don't accept that at all. He
12:44:39 8 was definitive.

12:44:40 9 We also never saw any internal -- in all those
12:44:44 10 stacks of documents, any internal plaintiffs
12:44:48 11 communications where they are complaining about
12:44:49 12 Greenpeace International complaining about the banks
12:44:51 13 relying on something Greenpeace International said or
12:44:54 14 did, and I think that's very, very odd, because if they
12:44:56 15 had the 300 million dollar impact that plaintiffs claim
12:44:59 16 that they did, wouldn't we at least have expected to
12:45:02 17 see plaintiffs send an e-mail, just one, to talk about
12:45:06 18 it? Instead, what we saw was statements made to the
12:45:09 19 board at the time blaming the refinancing delay
12:45:13 20 squarely on the Standing Rock Sioux Tribe, the
12:45:15 21 litigation surrounding the protest from 2016. Any
12:45:19 22 other conclusion is just revisionist history.

12:45:22 23 And because their defamation claims against
12:45:27 24 Greenpeace International fails, their claim against
12:45:29 25 Greenpeace International for tortious interference also

12:45:33 1 must fail. So to prove tortious interference, they
12:45:37 2 need to show that Greenpeace International specifically
12:45:37 3 engaged in an act that was wrong, and the only wrong
12:45:42 4 that they have is the supposedly defamatory letter from
12:45:45 5 BankTrack. The claims rise and fall together. And
12:45:48 6 once again, Greenpeace International is an advocacy
12:45:52 7 organization. It is their business to draw attention
12:45:54 8 to problems that they see, to promote solutions, to
12:45:58 9 talk to people who share those opinions. They cannot
12:46:02 10 -- plaintiffs cannot prove tortious interference by
12:46:04 11 pointing to letters Greenpeace International sent to
12:46:06 12 Citibank, for instance, because they don't even claim
12:46:09 13 that Greenpeace International said anything wrong in
12:46:12 14 those letters. They just don't like that it was sent.
12:46:14 15 They don't like people disagreeing with them. That is
12:46:16 16 very clear. But this is a democracy that valueless
12:46:19 17 free speech, and you are allowed to write to banks, you
12:46:22 18 are allowed to voice your opinion, and you are allowed
12:46:25 19 to lobby for a certain result.
12:46:26 20 Mr. Mahmoud admits to lobbying. He said
12:46:32 21 there's nothing wrong with that, no. Energy Transfer
12:46:34 22 CEO, Kelcy Warren admits it. He says, they were -- so
12:46:40 23 the company was working on getting the Trump
12:46:42 24 Administration to sort of undo what the Obama
12:46:45 25 Administration had done, he said, yeah, I would pretty

12:46:48 1 positive we would get it done. And the documents in
12:46:50 2 the case prove that Energy Transfer was lobbying for
12:46:53 3 DAPL.

12:46:53 4 It's a two-way street. Plaintiffs do not get
12:46:56 5 to say advocacy is only okay when they agree with the
12:46:59 6 opinion being pushed. It's just not how it works.

12:47:04 7 That's especially not how it's supposed to work when
12:47:07 8 plaintiffs completely fail to show that Greenpeace
12:47:10 9 International signing on to that letter caused them any
12:47:13 10 harm and failed to connect any of the harms to any
12:47:16 11 action Greenpeace International took.

12:47:17 12 If you think about, if this were a car accident
12:47:21 13 case, if Greenpeace International was on fault, it
12:47:24 14 might be on the hook to the plaintiff for the damage to
12:47:27 15 the car caused by the crash and depending on how bad
12:47:30 16 the crash was, maybe medical expenses, some lost wages,
12:47:34 17 but only if they could show that those particular
12:47:36 18 expenses were actually caused by Greenpeace
12:47:38 19 International's bad driving or caused anyone else's
12:47:40 20 accident.

12:47:40 21 So here plaintiffs have slung a lot of mud at
12:47:44 22 Greenpeace International but never once shown how the
12:47:45 23 one act of signing a letter with more than 500 others,
12:47:50 24 a letter that came from the Netherlands, caused them

12:47:51 25 any damage or how much money that particular act cost

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12:47:54 1 them, they just keep padding and padding their bill.

12:47:57 2 It's pretty simple. If Greenpeace International hadn't

12:48:00 3 signed that letter, ask yourself, would anything be

12:48:02 4 different? No, because there would still be 499 or

12:48:06 5 more others who did sign it, and it still would have

12:48:09 6 been sent to those same banks without Greenpeace

12:48:11 7 International.

12:48:12 8 The evidence is clear that the easement was

12:48:15 9 delayed before Greenpeace better national ever said a

12:48:18 10 word on November 30th, 2016. And you've been shown

12:48:23 11 zero evidence of that impacting timeline for their

12:48:25 12 financing or harming plaintiff's reputation, because

12:48:28 13 they did a really good job of that all by themselves.

12:48:32 14 So I'll just conclude by saying that I

12:48:35 15 understand that plaintiffs were frustrated with the

12:48:38 16 2016 protests, and I'm sure many of you were, too. It

12:48:42 17 was disruptive. But blaming Greenpeace International

12:48:44 18 for their frustrations is not just, it's not fair, and

12:48:48 19 it's not right. And awarding plaintiffs 300 million

12:48:52 20 dollars in damages based solely on the speculative

12:48:56 21 evidence that they have presented that lumps all of the

12:48:57 22 defendants together, it's not allowed by the law. Each

12:49:01 23 plaintiff must prove damages, if any, as to each

12:49:05 24 defendant. So each of the defendants, each of them.

12:49:08 25 You can't resort to speculation or guesswork to do it.

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12:49:13 1 And on top of that 300 million, plaintiffs also want

12:49:17 2 punitive damages. Punitive means they want to punish

12:49:20 3 them, set an example. But they can only get punitive

12:49:23 4 damages if the compensatory damages they want, that 300

12:49:27 5 million, is as I said entirely speculative, so you

12:49:32 6 cannot have it that way. What will the lesson be?

12:49:35 7 What was the point of that punishment? That you should

12:49:37 8 be scared to express your opinions? Or to support your

12:49:40 9 neighbors? Is that the message plaintiffs want to

12:49:44 10 send? Is that the lesson they want their children

12:49:46 11 taking away from that case or they too might be facing

12:49:50 12 a million dollar verdict? I hope not. Their case just

12:49:55 13 does not add up. It doesn't make sense how signing one

12:49:58 14 letter could have delayed construction that was already

12:50:00 15 delayed, and it doesn't make sense that it could have

12:50:03 16 caused headline risk when what was being said was

12:50:06 17 already old news. And it doesn't make sense that it

12:50:09 18 could have caused protests that happened months

12:50:12 19 earlier, and it doesn't make sense how it could have

12:50:14 20 caused Greenpeace Inc. to take actions in September and

12:50:16 21 October 2016 when Greenpeace International didn't even

12:50:19 22 know about it. So I ask you to please apply your

12:50:22 23 common sense and find that the plaintiffs have failed
12:50:26 24 to prove every single one of their claims against
12:50:29 25 Greenpeace International. Thank you.

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12:50:41 1 THE COURT: Mr. Kelly.

12:50:44 2 MR. KELLY: Hello. I'm the last of the

12:51:16 3 Greenpeace defendants to talk today, so this will be

12:51:21 4 the last thing you hear from defendants. The

12:51:22 5 plaintiffs will have an opportunity to give a rebuttal

12:51:25 6 after this.

12:51:27 7 Thank you for your time and attention. I'll

12:51:29 8 talk more about that at the end. But I want to talk

12:51:32 9 about the case that you've seen and I want to

12:51:34 10 specifically talk about Greenpeace Fund, I've tried to

12:51:39 11 I know we're getting to the end here, and not rehash or

12:51:42 12 re-till a bunch of ground.

12:51:50 13 I want to go back, I want to talk about voir

12:51:56 14 dire, I want to talk about what we talked about, the

12:52:00 15 agreements that we had. The first was the agreement

12:52:05 16 that you the jury, the whole panel made to Mr. Jack or

12:52:10 17 myself, depending which panel that you were in, that

12:52:14 18 you were not going to rule nor were you going to let

12:52:16 19 your fellow jurors rule without evidence from this

12:52:19 20 case, that you heard in this courtroom, that you and

12:52:22 21 your fellow jurors can point to and describe. That was

EXHIBIT 9



2024/1069

16.4.2024

DIRECTIVE (EU) 2024/1069 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 11 April 2024

on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation')

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2), point (f), thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. To establish such an area, the Union is to adopt, among others, measures relating to judicial cooperation in civil matters having cross-border implications and which are needed for the elimination of obstacles to the proper functioning of civil proceedings. That objective should be pursued if necessary by promoting the compatibility of the rules on civil procedure that are applicable in the Member States.
- (2) Article 2 of the Treaty on European Union (TEU) states that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.
- (3) Article 10(3) TEU states that every Union citizen has the right to participate in the democratic life of the Union. The Charter of Fundamental Rights of the European Union (the 'Charter') provides, inter alia, for the right to respect for private and family life, to the protection of personal data, to freedom of expression and information, which includes respect for the freedom and pluralism of the media, to freedom of assembly and of association and the right to an effective remedy and to a fair trial.
- (4) The right to freedom of expression and information as established in Article 11 of the Charter includes the right to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. It is necessary to give to Article 11 of the Charter the meaning and scope of corresponding Article 10 of the European Convention on Human Rights ('ECHR') on the right to freedom of expression as interpreted by the European Court of Human Rights ('ECtHR').
- (5) In its resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the Union, the European Parliament called on the Commission to propose a package of both soft and hard law to address the increasing number of strategic lawsuits against public participation ('SLAPPs') concerning journalists, non-governmental organisations (NGOs), academics and civil society in the Union. The Parliament expressed the need for legislative measures in the areas of civil and criminal procedural law, such as an early dismissal mechanism for abusive civil lawsuits, the right to the full award of costs incurred by the defendant, and the right to compensation for damage. The resolution of 11 November 2021 also included a call for adequate training for judges and legal practitioners on SLAPPs, a specific fund to provide financial support for the victims of SLAPPs and a public register of court decisions on SLAPP cases. In addition, Parliament called for the revision of Regulation (EU) No 1215/2012 of the European Parliament and of the Council ⁽³⁾ and of Regulation (EC) No 864/2007 of the European Parliament and of the Council ⁽⁴⁾ in order to prevent 'libel tourism' or 'forum shopping'.

⁽¹⁾ OJ C 75, 28.2.2023, p. 143.

⁽²⁾ Position of the European Parliament of 27 February 2024 (not yet published in the Official Journal) and decision of the Council of 19 March 2024.

⁽³⁾ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

⁽⁴⁾ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ L 199, 31.7.2007, p. 40).

- (6) The purpose of this Directive is to eliminate obstacles to the proper functioning of civil proceedings, while providing protection for natural and legal persons who engage in public participation on matters of public interest, including journalists, publishers, media organisations, whistleblowers and human rights defenders, as well as civil society organisations, NGOs, trade unions, artists, researchers and academics, against court proceedings initiated against them to deter them from public participation.
- (7) The right to freedom of expression is a fundamental right that is to be exercised with a sense of duty and responsibility, taking into account people's fundamental right to obtain impartial information, as well as respect for the fundamental right to protect one's reputation, protection of personal data and privacy. In cases of a conflict between those rights, all parties are to have access to courts with due respect for the fair trial principle. To that end, this Directive should leave the court or tribunal seised of the matter with the discretion to consider whether the application of the relevant safeguards is appropriate in a particular case. In exercising such discretion the court should not apply the relevant safeguards for example where the public participation is not in good faith such as in cases where, through the public participation, the defendant disseminated disinformation or fabricated allegations for the purpose of damaging the claimant's reputation.
- (8) Journalists play an important role in facilitating public debate and in the imparting and reception of information, opinions and ideas. They should be able to conduct their activities effectively and without fear in order to ensure that citizens have access to a plurality of views in European democracies. Independent, professional and responsible journalism, as well as access to pluralistic information, are key pillars of democracy. It is essential that journalists are afforded the necessary space to contribute to an open, free and fair debate and to counter disinformation, information manipulation and interference, in accordance with the ethics of journalism, and are afforded protection when acting in good faith.
- (9) This Directive does not provide a definition of a journalist, since the aim is to protect any natural or legal person that engages in public participation. However, it should be underlined that journalism is carried out by a wide range of actors, including reporters, analysts, columnists and bloggers, as well as others who engage in forms of self-publication in print, on the internet or elsewhere.
- (10) Investigative journalists and media organisations in particular play a key role in uncovering and combating organised crime, abuse of power, corruption, fundamental rights violations and extremism. Their work carries particularly high risks and they are experiencing a growing number of attacks, killings and threats, as well as intimidation and harassment. A robust system of safeguards and protection is required to enable investigative journalists to fulfil their crucial role as watchdogs on matters of public interest, without fear of punishment for searching for the truth and informing the public.
- (11) Human rights defenders should be able to participate actively in public life and promote accountability without fear of intimidation. Human rights defenders include individuals, groups and organisations in civil society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders are committed to promoting and safeguarding civil, political, economic, social, cultural, environmental, climate, women's and LGBTIQ rights and to fighting against direct or indirect discrimination as set out in Article 21 of the Charter. Considering the Union's environmental and climate policies, attention should also be given to environmental rights defenders as they play an important role in European democracies.
- (12) Other important participants in public debate, such as academics, researchers or artists, also deserve adequate protection, since they may also be targeted by SLAPPs. In a democratic society, they should be able to teach, learn, research, perform and communicate without fear of reprisal. Academics and researchers contribute fundamentally to public discourse and dissemination of knowledge, ensure that democratic debate can take place on an informed basis and counter disinformation.
- (13) A healthy and thriving democracy requires that people be able to participate actively in public debate without undue interference by public authority or other powerful actors, be they domestic or foreign. In order to ensure meaningful participation, people should be able to access reliable information which enables them to form their own opinions and exercise their own judgment in a public space in which different views can be expressed freely.
- (14) To foster this environment, it is important to protect natural and legal persons from abusive court proceedings against public participation. Such court proceedings are not initiated for the purpose of access to justice, but to silence public debate and prevent investigation of and reporting on breaches of Union and national law, typically using harassment and intimidation.

- (15) SLAPPs are typically initiated by powerful entities, for example individuals, lobby groups, corporations, politicians, and state organs in an attempt to silence public debate. They often involve an imbalance of power between the parties, with the claimant having a more powerful financial or political position than the defendant. Although not being an indispensable component of such cases, an imbalance of power, where present, significantly increases the harmful effects as well as the chilling effect of court proceedings against public participation. Where present, the misuse of economic advantage or political influence by the claimant against the defendant, along with the lack of legal merit, gives rise to particular concern if the abusive court proceedings in question are funded directly or indirectly from state budgets and are combined with other direct or indirect state measures against independent media organisations, independent journalism and civil society.
- (16) Court proceedings against public participation may have an adverse impact on the credibility and reputation of natural and legal persons that engage in public participation and may exhaust their financial and other resources. As a result of such proceedings, the publication of information on a matter of public interest could be delayed or prevented altogether. The length of procedures and the financial pressure may have a chilling effect on natural and legal persons that engage in public participation. The existence of such practices may therefore have a deterrent effect with regard to their work by contributing to self-censorship in anticipation of possible future court proceedings, which leads to the impoverishment of public debate to the detriment of society as a whole.
- (17) Those targeted by abusive court proceedings against public participation may face multiple cases simultaneously, sometimes initiated in several jurisdictions. This Directive applies only to matters of a civil or commercial nature having cross-border implications, although practices aimed at preventing, restricting or penalising public participation can also involve administrative or criminal cases or a combination of different types of proceedings. Proceedings initiated in the jurisdiction of one Member State against a person domiciled in another Member State are usually more complex and costly for the defendant. Claimants in court proceedings against public participation may also use procedural tools to increase the length and cost of litigation and to initiate proceedings in a jurisdiction that they perceive to be favourable to their case, instead of in the jurisdiction best placed to hear the claim (forum shopping). The financial pressure, the length and variety of procedures, and the threat of penalties constitute powerful tools to intimidate and silence critical voices. Such practices also place an unnecessary and harmful burden on judicial systems and lead to misuse of their resources, thus constituting an abuse of such systems.
- (18) The safeguards provided in this Directive should apply to any natural or legal person who directly or indirectly engages in public participation. They should also protect natural or legal persons who, either on a professional or on a personal basis, support, assist or provide goods or services to another person for purposes directly linked to public participation on a matter of public interest, such as lawyers, family members, internet providers, publishing houses or print shops, which face or are threatened with court proceedings for supporting, assisting or providing goods or services to persons targeted by SLAPPs.
- (19) This Directive should apply to any type of legal claim or action of a civil or commercial nature with cross-border implications brought in civil proceedings whatever the nature of the court or tribunal. This includes procedures for interim and precautionary measures, counteractions or other particular types of remedies available under other instruments. Where civil claims are brought in criminal proceedings, this Directive should apply where the consideration of those claims is fully governed by civil procedural law. However, it should not apply where the consideration of such claims is governed fully or partially by criminal procedural law.
- (20) This Directive should not apply to claims arising out of liability of the state for actions or omissions in the exercise of state authority (*acta iure imperii*) or to claims against officials who act on behalf of the state or to liability for acts of public authorities, including liability of publicly appointed office-holders. Member States could extend the scope of the procedural safeguards provided for in this Directive to such claims under national law. In line with established case law of the Court of Justice of the European Union, court proceedings might still fall within the scope of 'civil and commercial matters' as referred to in this Directive where a state or a public body is a party, if the acts or omissions do not occur in the exercise of state authority. This Directive should not apply to criminal matters or arbitration.
- (21) This Directive lays down minimum rules, thus enabling the Member States to adopt or maintain provisions that are more favourable to persons engaging in public participation, including national provisions that establish more effective procedural safeguards, such as a liability regime preserving and protecting the right to freedom of expression and information. The implementation of this Directive should not serve to justify any regression in relation to the level of protection that already exists in each Member State.

- (22) Public participation should be defined as the making of any statement or the carrying out of any activity by a natural or legal person in the exercise of fundamental rights such as freedom of expression and information, freedom of the arts and sciences, or freedom of assembly and association, and concerning a matter of current or future public interest, including the creation, exhibition, advertisement, or other promotion of journalistic, political, scientific, academic, artistic, commentary or satirical communications, publications or works, and marketing activities. Future public interest refers to the fact that a matter might not yet be of public interest, but could become so, once the public becomes aware of it, for example by means of a publication. Public participation can also include activities related to the exercise of academic and artistic freedom, the right to freedom of association and peaceful assembly, such as the organisation of or participation in lobbying activities, demonstrations and protests or activities resulting from the exercise of the right to good administration and the right to an effective remedy, such as claims before courts or administrative bodies and participation in public hearings. Public participation should also include preparatory, supporting or assisting activities that have a direct and inherent link to the statement or activity that is targeted by SLAPPs to stifle public participation. Such activities should directly concern a specific act of public participation or be based on a contractual link between the actual target of a SLAPP and the person providing the preparatory, supporting or assisting activity. Bringing claims not against a journalist or a human rights defender but against the internet platform on which they publish their work or against the company that prints a text or a shop that sells the text can be an effective way of silencing public participation, as without such services opinions cannot be published and thus cannot influence public debate. In addition, public participation can cover other activities meant to inform or influence public opinion or to foster the taking of action by the public, including activities by private or public entities in relation to an issue of public interest, such as the organisation of or participation in research, surveys, campaigns or any other collective actions.
- (23) A matter of public interest should be defined as including matters relevant to the enjoyment of fundamental rights. It comprises issues such as gender equality, protection from gender-based violence and non-discrimination, protection of the rule of law, media freedom and pluralism. It should also include quality, safety or other relevant aspects of goods, products or services where such matters are relevant to public health, safety, the environment, the climate or to consumer and labour rights. A purely individual dispute between a consumer and a manufacturer or a service provider concerning a good, product or service should be covered by the notion of matter of public interest only where the matter contains an element of public interest, for instance where it concerns a product or service which fails to comply with environmental or safety standards.
- (24) Activities of a natural or legal person that is a public figure should also be considered as matters of public interest, since the public may legitimately take an interest in them. However, there is no legitimate interest where the sole purpose of a statement or activity concerning such a person is to satisfy the curiosity of a particular audience regarding the details of a natural person's private life.
- (25) Matters under consideration by a legislative, executive or judicial body or any other official proceedings can be examples of matters of public interest. Specific examples of such matters could be legislation concerning environmental standards or product safety, an environmental licence for a polluting factory or mine, or court proceedings with legal significance beyond the individual case, for instance proceedings concerning equality, discrimination in the workplace, environmental crime or money laundering.
- (26) Allegations of corruption, fraud, embezzlement, money laundering, extortion, coercion, sexual harassment and gender-based violence, or other forms of intimidation and criminality, including financial criminality and environmental crime qualify as matters of public interest. Where the wrongdoing in question is a matter of public interest, it should not be relevant whether it is categorised as a criminal or administrative offence under national law.
- (27) Activities aimed at protecting the values enshrined in Article 2 TEU, the principle of non-interference in democratic processes, and providing or facilitating public access to information with a view to fighting disinformation, including the protection of democratic processes against undue interference, also qualify as matters of public interest.

- (28) Abusive court proceedings against public participation typically involve litigation tactics deployed by the claimant and used in bad faith, such as tactics relating to the choice of jurisdiction, relying on one or more fully or partially unfounded claims, making excessive claims, the use of delaying tactics or deciding to discontinue cases at a later stage of the proceedings, initiating multiple proceedings on similar matters, and incurring disproportionate costs for the defendant in the proceedings. The past conduct of the claimant and, in particular, any history of legal intimidation should also be considered when determining whether the court proceedings are abusive in nature. Those litigation tactics, which are often combined with various forms of intimidation, harassment or threats before or during the proceedings, are used by the claimant for purposes other than gaining access to justice or genuinely exercising a right and are aimed at achieving a chilling effect on public participation in relation to the matter at stake.
- (29) Claims made in abusive court proceedings against public participation can be either fully or partially unfounded. This means that a claim does not necessarily have to be completely unfounded for the proceedings to be considered abusive. For example, even a minor violation of personality rights that could give rise to a modest claim for compensation under the applicable law can still be abusive, if a manifestly excessive amount or remedy is claimed. On the other hand, if the claimant in court proceedings pursues claims that are founded, such proceedings should not be regarded as abusive for the purposes of this Directive.
- (30) Where SLAPPs have a cross-border dimension, the complexity and challenges faced by defendants is increased, as they need to deal with proceedings in other jurisdictions, sometimes in multiple jurisdictions at the same time. This, in turn, results in additional costs and an additional burden with even more adverse consequences. A matter should be considered to have cross-border implications unless both parties are domiciled in the same Member State as the court seised and all other elements relevant to the situation concerned are located in that Member State. It is for the court to determine the elements relevant to the situation concerned depending on the particular circumstances of each case, taking into account for example, as appropriate, the specific act of public participation or the specific elements indicating a possible abuse, in particular where multiple proceedings are initiated in more than one jurisdiction. Such determination by the court should be carried out irrespective of the means of communication used.
- (31) Defendants should be able to apply for the following procedural safeguards: security to cover the costs of the proceedings and, where applicable, to cover damages, early dismissal of manifestly unfounded claims, and remedies, namely the award of costs and penalties or other equally effective appropriate measures. Such procedural safeguards should be applied in accordance with the right to an effective remedy and to a fair trial, as set out in Article 47 of the Charter, leaving the court discretion in individual cases to appropriately examine the matter at hand, thereby allowing for the speedy dismissal of manifestly unfounded claims without restricting effective access to justice.
- (32) Member States should ensure that all the procedural safeguards provided for in this Directive are available to natural or legal persons against whom court proceedings have been brought on account of their engagement in public participation and that the exercise of those safeguards is not unduly arduous. It is for national law to lay down or maintain the specific rules of procedure, form and methods for how the court or tribunal seised of the matter should deal with applications for procedural safeguards. For instance, Member States could apply existing civil procedural rules on the handling of evidence to assess whether the conditions for the application of the procedural safeguards are met or they could establish specific rules in that regard.
- (33) To ensure that applications for security and early dismissal are treated in an accelerated manner, Member States may set time limits for the holding of hearings or for the court to take a decision. They may additionally adopt schemes akin to procedures in relation to provisional measures. In order to conclude the proceedings as swiftly as possible, Member States should, in accordance with their national procedural law, endeavour to ensure that where the defendant has applied for remedies under this Directive, the decision on such application is taken in an accelerated manner, including by making use of already existing procedures under national law for accelerated treatment.
- (34) In some abusive court proceedings against public participation, claimants deliberately withdraw or amend claims or pleadings in order to avoid the court awarding costs to the successful party. That legal tactic could, in some Member States, leave the defendant with no chance of being reimbursed for the costs of the proceedings. Such withdrawals or amendments, if provided for by national law, and without prejudice to the parties' power to dispose over the proceedings, should therefore not affect the possibility of the defendant applying for remedies against abusive court proceedings against public participation, in accordance with national law. This should be without prejudice to the possibility for Member States to provide that procedural safeguards can be taken *ex officio*.

- (35) In order to provide a more effective level of protection, associations, organisations, trade unions and other entities which have, in accordance with the criteria laid down by national law, a legitimate interest in safeguarding or promoting the rights of persons engaging in public participation, should be able to support the defendant in court proceedings brought in relation to public participation, with the defendant's approval. That support should ensure that the specific expertise of such entities can be brought to bear in such proceedings, thereby contributing to the assessment by the court of whether a case is abusive or a claim is manifestly unfounded. Such support could, for example, take the form of providing information relevant to the case, intervening in favour of the defendant in court proceedings, or be in any other form as provided for in national law. The conditions under which NGOs could support the defendant and the procedural requirements for such support, such as time limits where appropriate, should be governed by national law. This should be without prejudice to the existing rights of representation and intervention as guaranteed by other Union or national law. Member States that do not have criteria for legitimate interest may accept that entities in general can support the defendant in accordance with this Directive.
- (36) In order to provide the defendant with an additional safeguard, it should be possible to grant security to cover the estimated costs of the proceedings, which may include the costs of legal representation incurred by the defendant, and, if provided for in national law, the estimated damages. However, it is necessary to strike a balance between that measure and the claimant's right of access to justice. The court or tribunal seised should be able, if it considers it appropriate, to order the claimant to provide security if there are elements that indicate that the proceedings are abusive or if there is a risk of the defendant not being reimbursed or in view of the economic situation of the parties or other such criteria laid down in national law. Granting of security does not entail a judgment on the merits of the case but serves as a precautionary measure to safeguard the effects of a final decision which determines that there has been an abuse of procedure, and to cover the costs and, if provided for in national law, the potential damage caused to the defendant, particularly where there is a risk of irreparable harm. It should be for Member States to decide whether security should be ordered by the court on its own motion or at the request of the defendant. Where national law so provides, it should be possible to grant security at any stage of the court proceedings.
- (37) The decision that grants early dismissal should be a decision on the merits, after appropriate examination. Member States should adopt new rules or apply existing rules under national law so that the court or tribunal can decide to dismiss manifestly unfounded claims as soon as it has received the information necessary to substantiate the decision. Such dismissal should take place at the earliest possible stage in the proceedings, but that moment could occur at any time during the proceedings depending on when the court or tribunal has received such information, in accordance with national law. The possibility of granting an early dismissal does not preclude the application of national rules which enable national courts or tribunals to assess the admissibility of an action even before the proceedings are initiated.
- (38) Where the defendant has applied for the dismissal of the claim as manifestly unfounded, the court or tribunal should deal with that application in an accelerated manner, in accordance with national law, to expedite the assessment of whether the claim is manifestly unfounded, taking into account the specific circumstances of the case.
- (39) In line with general principles of civil procedure, a claimant pursuing a claim against a natural or legal person engaging in public participation bears the burden of proof that such claim is well-founded. Where the defendant has applied for early dismissal, in order to avoid that early dismissal the claimant should have to substantiate the claim at least to such an extent that it enables the court to conclude that the claim is not manifestly unfounded.
- (40) A decision granting early dismissal should be subject to appeal. A decision refusing early dismissal could also be subject to appeal in accordance with national law.
- (41) Where the court has found the proceedings to be abusive, costs should include all types of costs of the proceedings that can be awarded under national law, including the full costs of legal representation incurred by the defendant unless such costs are excessive. Where national law does not provide for the award in full of the costs of legal representation beyond what is set out in statutory fee tables, Member States should ensure that the claimant fully bears such costs by other means available under national law. However, the full costs of legal representation should not be awarded where such costs are excessive, for example where disproportionate fees have been agreed. The court should render the decisions on costs in accordance with national law.

- (42) The main objective of giving courts or tribunals the possibility of imposing penalties or other equally effective appropriate measures is to deter potential claimants from initiating abusive court proceedings against public participation. Other appropriate measures, including the payment of compensation for damage or the publication of the court decision, where provided for in national law, should be as effective as penalties. Where the court has found the proceedings to be abusive, such penalties or other equally effective appropriate measures should be determined on a case by case basis, should be proportionate to the nature of, and to the elements indicating, the abuse identified and should take into account the potential for a harmful or chilling effect of those proceedings on public participation or the economic situation of the claimant that has exploited the imbalance of power. It is for the Member States to decide how any monetary amounts are to be paid.
- (43) In the cross-border context, it is also important to recognise the threat of SLAPPs in third-countries targeting journalists, human rights defenders and other persons engaged in public participation who are domiciled in the Union. SLAPPs in third-countries may involve excessive damages being awarded against persons engaged in public participation. Court proceedings in third-countries are more complex and costly for the targets of SLAPPs. To protect democracy and the right to freedom of expression and information in the Union and to avoid the safeguards provided by this Directive being undermined by recourse to court proceedings in other jurisdictions, it is important to provide protection against manifestly unfounded claims and abusive court proceedings against public participation in third-countries. It is for Member States to choose whether to refuse the recognition and enforcement of a third-country judgment as manifestly contrary to public policy (*ordre public*) or on the basis of a separate ground for refusal.
- (44) This Directive creates a new special ground of jurisdiction in order to ensure that targets of SLAPPs domiciled in the Union have an efficient remedy available in the Union against abusive court proceedings against public participation brought in a court or tribunal of a third-country by a claimant domiciled outside the Union. It should apply irrespective of a decision having been rendered or of a decision being final, as targets of SLAPPs can suffer damage and incur costs from the start of court proceedings and possibly even without any decision being rendered, such as in the case of a withdrawal of the claim. However, Member States should be able to decide to limit the exercise of the jurisdiction while proceedings are still pending in the third-country, in accordance with national law, for example by providing for a stay of the proceedings in the Member State. This special ground of jurisdiction allows the targets of SLAPPs domiciled in the Union to seek, in the courts or tribunals of their domicile, compensation for damage and costs incurred or reasonably expected to be incurred in connection with the proceedings before the court or tribunal of the third-country. That special ground of jurisdiction is aimed to act as a deterrent against SLAPPs brought in third-countries against persons domiciled in the Union and the decision given in such proceedings should be capable of being enforced, for example, where a claimant domiciled outside the Union has assets in the Union. The provision laid down in this Directive concerning that special ground of jurisdiction should not deal with applicable law or with substantive law on damages as such.
- (45) This Directive should not affect the application of bilateral and multilateral conventions and agreements between a third State and the Union or a Member State concluded before the date of entry into force of this Directive, including the 2007 Lugano Convention, in line with Article 351 of the Treaty on the Functioning of the European Union (TFEU).
- (46) Member States should make available information on available procedural safeguards, remedies and existing support measures in one single place, in a so-called 'one-stop shop', in order to provide easy access to dedicated information free of charge to those targeted with SLAPPs to help them find all relevant information. It is typical in SLAPPs that those targeted suffer severe financial repercussions and psychological and reputational harm. Causing such harm is one of the aims of SLAPP claimants when they initiate abusive court proceedings against public participation. Therefore, the information provided through the 'one-stop shop' should cover existing support mechanisms, for example information on relevant organisations and associations which provide legal or financial assistance and psychological support to targets of SLAPPs. This Directive does not define the form of that one-stop shop.
- (47) The aim of the publication of relevant court decisions is to raise awareness of and provide a source of information on SLAPPs to courts, legal professionals and the general public. Such publication should respect Union and national law on the protection of personal data and could be ensured via appropriate channels such as existing judicial databases or the European e-Justice Portal. In order to limit the administrative burden, Member States should at least be required to publish judgments of national courts of appeal or of the highest instance.

- (48) The type of data to be collected by Member States pursuant to this Directive, where available, focuses on a limited number of key elements, such as the number of abusive court proceedings against public participation classified on the basis of the types of defendants and claimants and by the types of claims which are used to initiate such court proceedings. Such data are needed to monitor the existence and growth in the number of SLAPPs in the Union, providing authorities and other relevant stakeholders with information to quantify and better understand SLAPPs and helping them to provide the necessary support for targets of SLAPPs. The availability of data would be facilitated by the digitalisation of justice.
- (49) Commission Recommendation (EU) 2022/758 ⁽⁵⁾ is addressed to Member States and provides a comprehensive toolbox of measures including training, awareness-raising, support for targets of abusive court proceedings against public participation, data collection, and the reporting on and monitoring of court proceedings against public participation. Where the Commission prepares a report on the application of this Directive, also taking into account the national context of each Member State, including the implementation of Recommendation (EU) 2022/758, it should prepare a separate summary of the report, in an easily accessible format, containing key information on the use of the safeguards provided for in this Directive in the Member States. The Commission should publish both the report and the summary via appropriate channels, including the European e-Justice Portal.
- (50) This Directive should be without prejudice to the protection provided by other instruments of Union law establishing more favourable rules for natural and legal persons that engage in public participation. In particular, this Directive is not intended to reduce or restrict rights such as the right to freedom of expression and information, nor is it intended to detract in any way from the protection offered by Directive (EU) 2019/1937 of the European Parliament and of the Council ⁽⁶⁾, as implemented in national law. As regards situations that fall within the scope of this Directive and of Directive (EU) 2019/1937, the protection offered by both acts should apply.
- (51) The rules on jurisdiction and applicable law set out in Regulations (EU) No 1215/2012 and (EC) No 864/2007 maybe relevant in SLAPP cases. Therefore, it is important that any future review of those Regulations also assess the SLAPP-specific aspects of the rules on jurisdiction and applicable law.
- (52) This Directive complies with fundamental rights, the Charter and general principles of Union law. Accordingly, this Directive should be interpreted and implemented in accordance with those fundamental rights, including the right to freedom of expression and of information, as well as the right to an effective remedy, to a fair trial and to access to justice. When implementing this Directive, all public authorities involved should achieve, in situations where there is a conflict between relevant fundamental rights, a fair balance between the rights concerned, in accordance with the principle of proportionality.
- (53) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (54) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, Ireland has notified, by letter of 6 July 2022, its wish to take part in the adoption and application of this Directive.
- (55) Since the objectives of this Directive cannot be sufficiently achieved by the Member States because of the differences between national procedural laws, but can rather, by reason of the fact that this Directive sets common minimum standards for national procedural safeguards in cross-border matters of a civil and commercial nature, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

⁽⁵⁾ Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation') (OJ L 138, 17.5.2022, p. 30).

⁽⁶⁾ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

Subject matter

This Directive provides safeguards against manifestly unfounded claims or abusive court proceedings in civil matters with cross-border implications brought against natural and legal persons on account of their engagement in public participation.

Article 2

Scope

This Directive shall apply to matters of a civil or commercial nature with cross-border implications brought in civil proceedings, including procedures for interim and precautionary measures and counteractions, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or the liability of the state for acts and omissions in the exercise of state authority (*acta iure imperii*). This Directive shall not apply to criminal matters or arbitration and shall be without prejudice to criminal procedural law.

Article 3

Minimum requirements

1. Member States may introduce or maintain provisions that are more favourable to protect persons engaged in public participation against manifestly unfounded claims or abusive court proceedings against public participation in civil matters, including national provisions that establish more effective procedural safeguards relating to the right to freedom of expression and information.
2. The implementation of this Directive shall in no circumstances constitute grounds for a reduction in the level of safeguards already afforded by Member States in the matters covered by this Directive.

Article 4

Definitions

For the purposes of this Directive, the following definitions apply:

- (1) 'public participation' means the making of any statement or the carrying out of any activity by a natural or legal person in the exercise of the right to freedom of expression and information, freedom of the arts and sciences, or freedom of assembly and association, and any preparatory, supporting or assisting action directly linked thereto, and which concerns a matter of public interest;
- (2) 'matter of public interest' means any matter which affects the public to such an extent that the public may legitimately take an interest in it, in areas such as:
 - (a) fundamental rights, public health, safety, the environment or the climate;
 - (b) activities of a natural or legal person that is a public figure in the public or private sector;
 - (c) matters under consideration by a legislative, executive, or judicial body, or any other official proceedings;
 - (d) allegations of corruption, fraud, or of any other criminal offence, or of administrative offences in relation to such matters;

- (e) activities aimed at protecting the values enshrined in Article 2 of the Treaty on European Union, including the protection of democratic processes against undue interference, in particular by fighting disinformation;
- (3) 'abusive court proceedings against public participation' mean court proceedings which are not brought to genuinely assert or exercise a right, but have as their main purpose the prevention, restriction or penalisation of public participation, frequently exploiting an imbalance of power between the parties, and which pursue unfounded claims. Indications of such a purpose include for example:
 - (a) the disproportionate, excessive or unreasonable nature of the claim or part thereof, including the excessive dispute value;
 - (b) the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;
 - (c) intimidation, harassment or threats on the part of the claimant or the claimant's representatives, before or during the proceedings, as well as similar conduct by the claimant in similar or concurrent cases;
 - (d) the use in bad faith of procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping or the discontinuation of cases at a later stage of the proceedings in bad faith.

Article 5

Matters with cross-border implications

1. For the purposes of this Directive, a matter is considered to have cross-border implications unless both parties are domiciled in the same Member State as the court seised and all other elements relevant to the situation concerned are located only in that Member State.
2. Domicile shall be determined in accordance with Regulation (EU) No 1215/2012.

CHAPTER II

Common rules on procedural safeguards

Article 6

Applications for procedural safeguards

1. Member States shall ensure that where court proceedings are brought against natural or legal persons on account of their engagement in public participation, those persons can apply, in accordance with national law, for:
 - (a) security as provided for in Article 10;
 - (b) early dismissal of manifestly unfounded claims as provided for in Chapter III;
 - (c) remedies against abusive court proceedings against public participation as provided for in Chapter IV.
2. Member States may provide that measures on procedural safeguards as provided for in Chapters III and IV can be taken *ex officio* by the court or tribunal seised of the matter.

Article 7

Accelerated treatment of applications for procedural safeguards

1. Member States shall ensure that applications in accordance with Article 6(1) points (a) and (b) are treated in an accelerated manner in accordance with national law, taking into account the circumstances of the case, the right to an effective remedy and the right to a fair trial.

2. Member States shall ensure that applications in accordance with Article 6(1) point (c) may also be treated in an accelerated manner, where possible, in accordance with national law, taking into account the circumstances of the case, the right to an effective remedy and the right to a fair trial.

Article 8

Subsequent amendment to claim or pleadings

Member States shall ensure that in court proceedings brought against natural or legal persons on account of their engagement in public participation any subsequent amendments to the claims or the pleadings made by the claimant, including the withdrawal of claims, do not affect the possibility for the defendant to apply for remedies as provided for in Chapter IV, in accordance with national law.

The first paragraph is without prejudice to Article 6(2).

Article 9

Support for the defendant in court proceedings

Member States shall ensure that a court or tribunal seized of court proceedings brought against natural or legal persons on account of their engagement in public participation may accept that associations, organisations, trade unions and other entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in safeguarding or promoting the rights of persons engaging in public participation, may support the defendant, where the defendant so approves, or provide information in those proceedings in accordance with national law.

Article 10

Security

Member States shall ensure that in court proceedings brought against natural or legal persons on account of their engagement in public participation, the court or tribunal seized may require, without prejudice to the right of access to justice, that the claimant provide security for the estimated costs of the proceedings, which may include the costs of legal representation incurred by the defendant, and, if provided for in national law, damages.

CHAPTER III

Early dismissal of manifestly unfounded claims

Article 11

Early dismissal

Member States shall ensure that courts and tribunals may dismiss, after appropriate examination, claims against public participation as manifestly unfounded, at the earliest possible stage in the proceedings, in accordance with national law.

Article 12

Burden of proof and substantiation of claims

1. The burden of proving that the claim is well founded rests on the claimant who brings the action.
2. Member States shall ensure that where a defendant has applied for early dismissal, it shall be for the claimant to substantiate the claim in order to enable the court to assess whether it is not manifestly unfounded.

Article 13

Appeal

Member States shall ensure that a decision granting early dismissal pursuant to Article 11 is subject to an appeal.

CHAPTER IV

Remedies against abusive court proceedings against public participation

Article 14

Award of costs

1. Member States shall ensure that a claimant who has brought abusive court proceedings against public participation can be ordered to bear all types of costs of the proceedings that can be awarded under national law, including the full costs of legal representation incurred by the defendant unless such costs are excessive.
2. Where national law does not guarantee the award in full of the costs of legal representation beyond what is set out in statutory fee tables, Member States shall ensure that such costs are fully covered, unless they are excessive, by other means available under national law.

Article 15

Penalties or other equally effective appropriate measures

Member States shall ensure that courts or tribunals seised of abusive court proceedings against public participation may impose effective, proportionate and dissuasive penalties or other equally effective appropriate measures, including the payment of compensation for damage or the publication of the court decision, where provided for in national law, on the party who brought those proceedings.

CHAPTER V

Protection against third-country judgments

Article 16

Grounds for refusal of recognition and enforcement of a third-country judgment

Member States shall ensure that the recognition and enforcement of a third-country judgment in court proceedings against public participation by a natural or legal person domiciled in a Member State is refused, if those proceedings are considered manifestly unfounded or abusive under the law of the Member State in which such recognition or enforcement is sought.

Article 17

Jurisdiction for actions related to third-country proceedings

1. Member States shall ensure that, where abusive court proceedings against public participation have been brought by a claimant domiciled outside the Union in a court or tribunal of a third-country against a natural or legal person domiciled in a Member State, that person may seek, in the courts or tribunals of the place where that person is domiciled, compensation for the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third-country.
2. Member States may limit the exercise of jurisdiction under paragraph 1 while proceedings are still pending in the third-country.

CHAPTER VI

Final provisions

Article 18

Relations with bilateral and multilateral conventions and agreements

This Directive shall not affect the application of bilateral and multilateral conventions and agreements between a third State and the Union or a Member State concluded before 6 May 2024.

*Article 19***Information and transparency**

1. Member States shall ensure that natural or legal persons engaging in public participation referred to in Article 6 have access, as appropriate, to information on available procedural safeguards and remedies and existing support measures such as legal aid and financial and psychological support, where available.

The information referred to in the first subparagraph shall include any available information on awareness-raising campaigns, where appropriate in cooperation with relevant civil society organisations and other stakeholders.

Such information shall be provided in one single place in an easily accessible format via an appropriate channel, such as an information centre, an existing focal point or an electronic gateway, including the European e-Justice Portal.

2. Member States shall ensure that legal aid in cross-border civil proceedings is provided in accordance with Council Directive 2003/8/EC⁽⁷⁾.

3. Member States shall publish in an easily accessible and electronic format any final judgment delivered by their national courts of appeal or of the highest instance in relation to proceedings falling within the scope of this Directive. That publication shall be carried out in accordance with national law.

*Article 20***Data collection**

Member States shall, on an annual basis and where available, submit data on the applications and on decisions referred to in Chapters II, III, IV and V to the Commission, preferably in an aggregated form, with regard to:

- (a) the number of abusive court proceedings against public participation cases, initiated in the relevant year;
- (b) the number of court proceedings, classified by type of defendant and of claimant;
- (c) the type of claim submitted on the basis of this Directive.

*Article 21***Review**

Member States shall, by 7 May 2030, provide the Commission with the available data regarding the application of this Directive, in particular available data showing how those targeted by court proceedings against public participation have used the safeguards provided for in this Directive. On the basis of the information provided, the Commission shall by 7 May 2031 and every five years thereafter at the latest, submit to the European Parliament and to the Council a report on the application of this Directive. That report shall provide an assessment of developments with regard to abusive court proceedings against public participation and the impact of this Directive in the Member States while taking into account the national context in each Member State, including the implementation of Recommendation (EU) 2022/758. If necessary, that report shall be accompanied by proposals to amend this Directive. The Commission report shall be made public.

*Article 22***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 7 May 2026. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

⁽⁷⁾ Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ L 26, 31.1.2003, p. 41).

*Article 23***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 24***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 11 April 2024.

For the European Parliament

The President

R. METSOLA

For the Council

The President

H. LAHBIB

EXHIBIT 10

Exhibit E



Stories Greenpeace

Greenpeace vs. Energy Transfer's SLAPP: What happens after the North Dakota trial?



Chris Greenberg

1 Apr 2025 • 5 min read



An interview with Greenpeace International General Counsel Kristin Casper

Onward. Because we will not back down. We will not be silenced.

The fight against Energy Transfer's SLAPP continues — and it is far from over. The stakes of this bullying lawsuit by the Texas-based Big Oil company behind the infamous Dakota Access Pipeline are too high to rest until justice is served. We will not back down, we will keep going, together.

The lawsuits filed by Energy Transfer (ET) against Greenpeace International (GPI) and two Greenpeace entities in the United States (Greenpeace Inc., and Greenpeace Fund) since 2017 are clear-cut examples of SLAPPs (Strategic Lawsuits Against Public Participation). Like all SLAPPs, ET's lawsuits have been an attempt to bury nonprofits and activists in legal fees, push them towards bankruptcy, and ultimately silence dissent. Not only does Energy Transfer's SLAPP attempt to erase the Indigenous leadership of the Standing Rock



The absurd US\$ 660 million jury verdict against Greenpeace entities in North Dakota made news, but this fight is bigger than the Greenpeace network. With the overwhelming support of allies all around the world, the defence against Energy Transfer's bullying tactics will continue for as long as it takes to secure the freedoms we all need to deliver a green, just and peaceful future for all. After nearly a decade of defending these SLAPPs, the Greenpeace Legal departments are prepared to continue as long as it takes!

To get a better understanding of the legal process and next steps of how the jury verdict in North Dakota fits into the ongoing legal fight against Energy Transfer's SLAPP, let's ask a few questions to Greenpeace International's General Counsel, Kristin Casper:

Is this fight over?

Kristin Casper: Absolutely not, this fight is far from over. Big Oil thinks they can bully us into silence, but we won't be silenced.

In this fight with Energy Transfer, we know the facts are on our side.

The Greenpeace entities in the US have already announced an intention to appeal, in the event that the trial court does not itself overrule the jury's verdict. Greenpeace International is weighing all legal options, including appeal, to challenge this wrongful SLAPP suit by Energy Transfer. We believe we have many and strong grounds for appeal based on how the trial was conducted.

At this moment, we are preparing legal filings that call for this North Dakota verdict to be overturned. Meanwhile, in Europe, Greenpeace International has already filed an anti-SLAPP lawsuit in Dutch court, to recover all damages and costs suffered as a result of ET's back-to-back SLAPP lawsuits against us, and we are looking forward to seeing Energy Transfer in court.

This isn't just a fight for Greenpeace defendants: it's a fight about the protection of fundamental rights for everyone. We are committed to our values, such as nonviolence, independence, and promotion of solutions. We won't back down from them. This is the kind of fight that we were made for.

GREENPEACE

follows, but so does a drive to correct a wrong. That said, we knew going into this trial that the deck was unjustly stacked against us. This case should have been thrown out long before it ever made its way to a jury trial, as a matter of law.

What happens in Morton County after the jury verdict?

KC: The trial court must decide whether to confirm, revise, or vacate the verdict. Generally, the decision can only be appealed once a final judgment by the trial court is entered.

Why was Morton County the wrong place for this case to be tried?

KC: The community in Morton County should not have had to bear the burden of this case. Every judge in this district recused themselves from presiding over the case. To fill the gap, the court had to bring in a judge from another district. The case should have been dismissed but if a trial were to happen at all, it should have been moved to another venue to ensure the fairness of the proceedings.



The Morton County Memorial Courthouse. © Tim Aubry / Greenpeace



KC: There are very strong grounds for appeal. There have been so many extremely prejudicial errors in these proceedings that the question is rather where we should start.

But just to name a few, here are some potential grounds for appeal, by way of example:

- The District Court's lack of jurisdiction over Greenpeace International;
- The lack of evidence to support key findings;
- The exclusion of key evidence supporting the defense;
- The inclusion of irrelevant and prejudicial evidence; and
- Ongoing concerns about the fairness and impartiality of the jury and the denial of requests for a change in venue.

You can get a feel for our strong arguments by reading GPI's motion for summary judgment, which was denied without any substantive reasoning.

Do Greenpeace entities really have to pay US\$660 million?

KC: No. Nor could they. Greenpeace entities don't have that kind of money. There is no scenario in which Energy Transfer gets paid this ridiculous amount.

But also, there are many legal steps between this verdict and even the potential enforcement of it, and justice and the facts are on our side. That's why Greenpeace International has brought a suit against Energy Transfer in the Netherlands: showing that, as a result of their abusive lawsuits, it is actually Energy Transfer that owes Greenpeace International compensation.

We are prepared to take this fight every step of the way, and we are confident in our ability to correct the record and be made whole.

Why is Greenpeace International suing Energy Transfer in the Netherlands?



damages and costs it has suffered as a result of ETS back-to-back SLAPP lawsuits demanding Greenpeace International and the Greenpeace entities in the United States pay hundreds of millions of dollars in damages. The first preliminary hearing in Greenpeace International's anti-SLAPP suit against Energy Transfer is set for July 2, 2025.

How long might it take for the Dutch case and US appeal(s) to play out?

KC: We don't know at this point. But in general, legal proceedings take a long time.

In the US, the appeal to the North Dakota Supreme Court may not even be the end of the legal proceedings. This legal battle with Energy Transfer has already been going on for upwards of eight years (since 2017), but however long it takes, is how long we will stay strong.

The goal of SLAPP suits is precisely that: to tie up resources, to wear us down, and pull us away from continuing to pursue our campaign goals: but unlike many smaller organisations and individuals that face such tactics, Greenpeace International is built to withstand this pressure: our campaigns are as big and bold and impactful as ever before.

Even while representatives from the Greenpeace parties were present in Mandan, North Dakota for the duration of the trial, the Greenpeace ship Rainbow Warrior was being welcomed back to the Marshall Islands to start a six-week mission around the Pacific nation to elevate calls for nuclear and climate justice; and support independent scientific research into the impacts of decades-long nuclear weapons testing by the US government. Forty years earlier, Greenpeace crew evacuated over 300 people from the Rongelap atoll to Mejjatto island, after toxic nuclear fallout from the Castle Bravo test rendered their ancestral lands uninhabitable. Across decades and despite many setbacks, the work of the Greenpeace movement continues.

Do you expect to win?

KC: Our goal has always been bigger: our fight is for the hearts and minds of people to ensure the sustainability of life in all its diversity

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#EnergyTransferSLAPP

About the author



Chris Greenberg

Chris Greenberg is a Managing Editor for the Americas Communications Hub at Greenpeace International, based in Brooklyn, New York.

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