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.	MEMORANDUM OPINION ON ENERGY TRANSFER'S MOTION FOR ORDER FOR JUDGMENT

¶ 1. On November 11, 2025, Energy Transfer and Dakota Access (Energy Transfer) filed a Motion for Order for Judgment, which the Greenpeace Defendants collectively resisted. The parties presented oral argument on December 18, 2025. The briefs and oral arguments raised three issues – 1) the status of conspiracy as a stand-alone cause of action or simply a way to establish vicarious liability; 2) the definition of prevailing party for the purposes of assessing costs and disbursements; and 3) the form of judgment and when in the process costs and disbursements are actually taxed.

¶ 2. **Is conspiracy a stand-alone cause of action or simply a way to establish vicarious liability?** In the Court's Memorandum Opinion of October 28, 2025, Energy Transfer cited Riemers v. Peters-Riemers, 1999 ND 153, ¶ 24, 684 N.W. 2d 619, claiming the North Dakota Supreme Court recognized a separate cause of action for conspiracy:

> Although we have recognized a cause of action for a civil conspiracy to commit an unlawful act or to commit a lawful act by unlawful means, Riemers' affidavits do not provide competent, admissible evidence that would form a basis for liability or damages. See Hurt, 1999 ND 12, ¶ 37, 589 N.W.2d 551 (Holding the essence of a civil conspiracy is the damages caused by the agreement between parties to inflict injury upon another). . . .

The Court recognized a need to carefully consider the award of damages to ensure the damages were not duplicative of the damages for the underlying torts. As stated by the Court, significance attached to the fact the jury verdict attached conspiracy damages to the public relations allegations. The Court stands by its opinion on the status of conspiracy as a stand-alone cause of action.

¶ 3. **The definition of prevailing party for purposes of assessing costs and disbursements.** Greenpeace Fund strongly urged the Court to consider Greenpeace Fund as a prevailing party, given the fact the jury failed to find Greenpeace Fund responsible on the majority of the Energy Transfer claims. Likewise, the remaining Greenpeace defendants argued Energy Transfer dismissed claims and received damages in an amount less than Energy Transfer requested.

¶ 4. On this issue, the North Dakota Supreme Court has stated:

> The determination of who is a prevailing party entitled to recover necessary disbursements under N.D.C.C. § 28–26–06 is based upon success on the merits, not damages. Lemer v. Campbell, 1999 ND 223, ¶ 9, 602 N.W.2d 686. If opposing litigants each prevail on some issues, there may not be a single prevailing party for whom disbursements may be taxed. Id. at ¶ 7. A prevailing party is one "in whose favor a judgment is rendered, regardless of the amount of damages awarded." Black's Law Dictionary 1145 (7th ed.1999).
>
> > Generally, the prevailing party to a suit, for the purpose of determining who is entitled to costs, is the one who successfully prosecutes the action or successfully defends against it, prevailing on the merits of the main issue, in other words, the prevailing party is the one in whose favor the decision or verdict is rendered and the judgment entered.

> Lemer, 1999 ND 223, ¶ 9, 602 N.W.2d 686 (quoting 20 Am.Jur.2d Costs § 12 (1995)). See also Foss Alaska Line, Inc. v. Northland Servs., Inc., 724 P.2d 523, 526 (Alaska 1986); City of Amarillo v. Glick, 991 S.W.2d 14, 17 (Tex. App. 1997); 20 C.J.S. Costs § 11 (1990).

Dowhan v. Brockman, 2001 ND 70, ¶ 11, 624 N.W.2d 690.

The Court does not look to the amount of damages to determine the prevailing party:

> The determination of who is a prevailing party is based upon success on the merits, not damages. If opposing litigants each prevail on some issues, there may not be a single prevailing party for whom disbursements may be taxed. A prevailing party is one in whose favor **a judgment is rendered, regardless of the amount of damages awarded. Generally, the prevailing party to a suit, for the purpose of determining who is entitled to costs, is the one who successfully prosecutes the action or successfully defends against it, prevailing on the merits of the main issue, in other words, the prevailing party is the one in whose favor the decision or verdict is rendered and the judgment entered."**
>
> While the determination of whether a litigant is a prevailing party is a question of law, the amount of costs and disbursements ordered is left to the discretion of the district court.

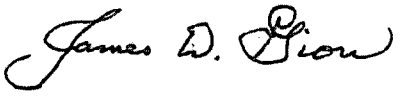
Ziemann v. Grosz, 2024 ND 166, ¶¶ 28-29, 10 N.W.3d 801, 813–14.

¶ 5. Energy Transfer prevailed against each of the Greenpeace defendants on certain claims, and received a substantial award from the jury against each defendant. The Court finds no way under the existing law to declare both the plaintiffs and defendants prevailed. Energy Transfer and Dakota Access are the prevailing parties.

¶ 6. The Court recollects Energy Transfer agreed to modify the language dealing with costs and disbursements at the hearing, thereby removing the main point of contention as to the form of judgment. The Court grants Energy Transfer's motion for Order for Judgment, and intends to execute the provided Order for Judgment.

Dated this 24th day of February, 2026.

BY THE COURT:



James D. Gion, Judge