STATE OF NORTH DAKOTA **DISTRICT COURT**

COUNTY OF MORTON **SOUTH CENTRAL JUDICIAL DISTRICT**

ENERGY TRANSFER LP, *et al.*, Plaintiffs, v. GREENPEACE INTERNATIONAL, *et al.*, Defendants.	Case No.: 30-2019-CV-00180 **GREENPEACE INC.'S BRIEF IN SUPPORT OF GREENPEACE DEFENDANTS' MOTION TO STAY PROCEEDINGS TO ENFORCE THE JUDGMENT WITHOUT BOND, OR IN THE ALTERNATIVE WITH MODIFIED SECURITY**

[¶1] Greenpeace, Inc. – and the Greenpeace Defendants together – should not bear the costs of the bond (or the burden of a bond on their working capital) to stay execution of the judgment while the Court considers whether to grant a new trial and, if necessary, the North Dakota Supreme Court resolves the many difficult issues (including constitutional questions under the First Amendment) that bear on the judgment. In this extraordinary case, involving a nonprofit social welfare organization (Greenpeace, Inc.), a U.S. nonprofit public charity (Greenpeace Fund), and a foreign charitable nonprofit foundation (Greenpeace International) – the balance of equities weighs strongly in favor of the Court exercising its inherent authority under Rule 62(b) to waive the bond requirement and stay the execution of the judgment through all appeals.

[¶2] Alternatively, the Court should permit the Greenpeace Defendants to post modified security in the amount of $5 million—the amount Plaintiffs told the Court in a post-trial filing they would have accepted as the financial portion of a settlement, $2 million of which is covered by insurance.

I. PROCEDURAL BACKGROUND

[¶3] On March 19, 2025, the jury awarded Plaintiffs a total of $666,890,020—$264,890,020 in compensatory damages and $402,000,000 in exemplary damages.

[¶4] The Greenpeace Defendants filed a Motion to Reduce Damages Award on April 1, 2025 (Dkt. 5041), Renewed Motions for Judgment as a Matter of Law on April 16, 2025 (Dkts. 5084, 5109, 5128), and a Motion for Extension of Automatic Stay of Execution of Judgment Pending Disposition of Post-Trial Motions on April 18, 2025 (Dkt. 5143). On April 14, 2025, Plaintiffs filed a Motion for Order for Judgment. Dkt. 5063.

[¶5] The Court addressed these motions on October 28, 2025. Dkt. 5320. Relevantly here, the Court dismissed some claims and reduced the total damages awarded to $345,358,436, and denied the Motion for Extension of Automatic Stay as premature because no judgment had been entered. *Id.* 18. On February 24, 2026, the Court denied Greenpeace Defendants' Motion for Reconsideration. Dkt. 5397. On February 27, the Court issued an Order Granting Plaintiffs' Renewed Motion for Order for Judgment. Dkt. 5403, and the Clerk issued judgment the same day. Dkt. 5405.

[¶6] Greenpeace Defendants will be filing a motion for a new trial, or other applicable relief, under North Dakota Rule of Civil Procedure 59, and if that motion is unsuccessful, will appeal to the North Dakota Supreme Court. Plaintiffs have indicated that they "will not stipulate to a stay of execution through expiration of Greenpeace's appeals." Dkt. 5054.

II. ARGUMENT

A. The Court Has Broad Authority to Waive the Bond and Stay Enforcement

[¶7] This Court has discretion to stay the enforcement of its judgment on such terms as it finds just. While North Dakota law provides that the Greenpeace Defendants have the *right* to a stay upon posting supersedeas bonds that, "collectively[,] may not exceed twenty-five million dollars," N.D.C.C. § 28-21-25(1); *see* N.D. R. Civ. Proc. 62, it does not *require* such a bond to

stay enforcement. Instead, "[a] motion to temporarily stay execution of a judgment requiring payment of money . . . is within the trial court's inherent power of supervision over its process." *Bd. of Trustees of N.D. Pub. Emps. Ret. Sys. v. N.D. Legis. Assembly*, 2023 ND 185, ¶ 89, 996 N.W.2d 873, 902–03, *as clarified* (Oct. 12, 2023)). The North Dakota Supreme Court in *Board of Trustees* relied in part on the Nebraska Supreme Court's ruling in *Wassung v. Wassung*, 136 Neb. 440, 286 N.W. 340 (1939), where that court noted:

> Courts of general jurisdiction have the inherent power to do all things necessary for the administration of justice within the scope of their jurisdiction. This includes supervisory power over their process and the power to stay temporarily execution on judgments rendered by them whenever it is necessary to accomplish the ends of justice and prevent injustice.

Id., 136 Neb. at 443-44, 286 N.W. at 342; *see also Cotton ex rel. McClure v. City of Eureka*, 860 F. Supp. 2d 999, 1027 (N.D. Cal. 2012) (court has "broad discretionary power to waive the bond requirement if it sees fit"); *Trans World Airlines, Inc. v. Hughes*, 314 F. Supp. 94, 96, 98 (S.D.N.Y. 1970) (issuance of order to show cause to modify the bond requirements in recognition of the "unprecedented size of the judgment"). Notably, this discretionary authority is not subject to the four-factor test set forth in *Nken v. Holder*, 556 U.S. 418, 428 (2009), which applies to stays of courts orders "other than a money judgment . . . while review proceeds." *Venckiene v. United States*, 929 F.3d 843, 853 (7th Cir. 2019).

[¶8] Like any stay order, staying the enforcement of a judgment pending appeal is within the Court's "traditional equitable authority." *AP v. Budowich*, No. 25-5109, 2025 U.S. App. LEXIS 13980, at *9 (D.C. Cir. June 6, 2025); *see also Port Chester Elec. Constr. Corp. v. HBE Corp.*, No. 86 Civ. 4617, 1991 U.S. Dist. LEXIS 17121, at *3 (S.D.N.Y. Nov. 26, 1991) (trial court "may use equitable principles to grant a stay of enforcement of the judgment pending appeal without a supersedeas bond"). Here, this relief is necessary "to accomplish the ends of justice and prevent injustice." *Wassung*, 136 Neb. at 444, 286 N.W. at 342.

B. The Court Should Waive the Bond as to all Defendants

[¶9] This Court should exercise its inherent power to stay execution of the judgment without requiring the Greenpeace Defendants to post a bond because this is an extraordinary case where Defendants have credible arguments that may prevail on appeal, and because Plaintiffs have little equitable interest.

1. Greenpeace Defendants Are Substantially Likely to Obtain Relief in This Complex Case

[¶10] As this Court previously observed, "This is one of the most complex cases in North Dakota's history." Dkt. 1139 ¶ 9. Given that complexity, and the likelihood that the Greenpeace Defendants will obtain relief on appeal, the Court should stay the execution of the judgment pending appeal without requiring the Greenpeace Defendants to post an additional bond.

[¶11] In this case, it would be especially unjust to require a more substantial security from these nonprofit Defendants because there are a number of crucial issues that may yet lead to significant relief in the form of a new trial, or on appeal. Greenpeace Inc. will argue, among other things, that the judgment does not reflect comparative fault as required by N.D.C.C. § 32-03.2-02; that there was no evidence of actual malice sufficient to meet the requirements of the First Amendment under *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); that in a protest with both protected and unprotected activity, Greenpeace Inc. can only be held liable for its own wrongful conduct pursuant to *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982); that petition clause immunity under the First Amendment precludes liability or damages for decisions of the U.S. Army Corps of Engineers, pursuant to the *Noerr-Pennington* doctrine; and that it was denied due process by holding the trial in Morton County and empaneling jurors who could not be unbiased. Although the Court has denied Defendants' motions on many of these issues to date, the Court may yet grant a new trial, and in any event these are undeniably substantial issues on which the North Dakota Supreme Court may well disagree.

2. Plaintiffs Are Not Prejudiced

[¶12] Proceeding without a bond will not prejudice Plaintiffs because the value they previously placed on their own claims was $5 million, and there is little question of the ability to pay this amount, much of which is covered by insurance.

[¶13] In their previous Motion for Order for Judgment, in April 2025, Plaintiffs put facts on the record regarding settlement discussions between the parties, including Plaintiffs' admission that they would have accepted a total payment of $5 million, along with a non-disparagement clause and a joint statement, to settle the case against all Defendants.[1] Dkt. 5065 ¶ 2. In that proposed settlement, at least $2 million of the payment was expected to come from insurance policies held by Defendants Greenpeace Inc. and Greenpeace Fund.

[¶14] Above the $2 million from insurance coverage, there is little doubt about the ability of the Greenpeace Defendants to cover an additional $3 million in liability. Thus waiving the bond entirely would still entail that Plaintiffs could recover the value that they previously placed on their claims.

3. Plaintiffs Have Little Equitable Interest in Greater Security

[¶15] Plaintiffs' equitable interest in securing a greater portion of their judgment is slight, and does not tip the balance of the equities against staying enforcement without additional security.

[¶16] Plaintiffs have never had the legal right to operate the Dakota Access Pipeline (DAPL). The DAPL easement was vacated in 2020 because the U.S. Army Corps of Engineers had not conducted a required Environmental Impact Statement (EIS). The Army Corps issued its

[1] This disclosure breached settlement confidentiality rules. *See* Rule IV (Confidentiality), App'x A to Rule 8.9: Code of Mediation Ethics ("Any communication, verbal or written, in a mediation process is confidential and inadmissible as evidence in any proceeding unless disclosure is required by law. Any statement made by a party or counsel during mediation is considered confidential and will not be disclosed to any other person unless explicit permission for disclosure has been given."). Defendants are not disclosing confidential settlement communications beyond Plaintiffs' own improper disclosure.

final EIS only in *December 2025* – many years after the delays attributed to the Greenpeace Defendants – and the Army Corps *still* has not issued the permits for DAPL to cross federal land. Thus, as a federal court noted last year, "No one disputes, however, that the pipeline is currently an unauthorized structure" on federal property. *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, No. 24-2905, 2025 U.S. Dist. LEXIS 59300, at *16 (D.D.C. Mar. 28, 2025).[2]

[¶17] A significant portion of the judgment here is based on Plaintiffs' claims of monetary losses from delays in DAPL constructions, financing, and operation.[3] But since the Plaintiffs have never had a legal right to operate the pipeline, any income at all they have generated from it is a windfall.

[¶18] In the equitable calculus, obtaining money "lost" on a project that has never operated legally – and that remains an "unauthorized structure" – weighs very little, if at all. Regardless of their entitlement to damages on their legal claims, Plaintiffs can have no equitable argument that justice requires them to reap yet more profits from a project that has never operated legally.

[¶19] Plaintiffs would not be prejudiced by a stay of enforcement without a bond, and the balance of equities weighs in favor of such a stay.

C. In the Alternative, the Court Should Impose a Collective $5 Million Bond Amount

[¶20] In the alternative, if the Court declines to waive the bond requirement in its entirety, Defendants request that the Court lower the collective bond amount to $5 million – the amount that Defendants previously sought in settlement.

[¶21] Such relief finds precedent in many other cases in which courts modified the

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[2] The federal court rejected the argument that DAPL's status as an unauthorized structure *requires* the Army Corps to shut it down or remove it, but there is no question that Plaintiffs do not have any *right* to operate the pipeline.

[3] *See, e.g.*, Mar. 17, 2025, Tr. at 43:2-20 (Plaintiffs' counsel arguing that delays to pipeline operation caused $80 million in lost profits).

conditions under which a stay is issued. *See, e.g.*, *Olympia Equip. Leasing Co. v. W. Union Tel. Co.*, 786 F.2d 794, 796 (7th Cir. 1986); *Miami Int'l Realty Co. v. Paynter*, 807 F.2d 871, 873 (10th Cir. 1986); *Trans World Airlines, Inc. v. Hughes*, 515 F.2d 173, 177 (2d Cir. 1975); *Alexander v. Chesapeake, Potomac & Tidewater Books, Inc.*, 190 F.R.D. 190, 193 (E.D. Va. 1999); *James v. Antilles Ins., Inc.*, No. CIV. 432/90, 1992 WL 12729437, at *4 (Terr. V.I. Feb. 6, 1992); *Int'l Distribution Centers, Inc. v. Walsh Trucking Co.*, 62 B.R. 723, 732 (S.D.N.Y. 1986); *C. Albert Sauter Co. v. Richard S. Sauter Co.*, 368 F. Supp. 501, 520 (E.D. Pa. 1973).

[¶22] As noted above, $5 million is the value that Plaintiffs themselves placed on their alleged injuries in their settlement proposal. Given this prior demand, limiting a bond to this amount would not prejudice Plaintiffs. Especially in light of the complexity of this case – unique in the judicial history of North Dakota – and Defendants' strong arguments on appeal, the interests of justice are served by imposing a bond requirement of no greater than $5 million.

D. Statutory Cap

[¶23] It is undisputed that the maximum bond requirement under North Dakota law is $25 million for all three defendants. N.D.C.C. § 28-21-25(1) ("the total supersedeas bond that is required of all appellants collectively may not exceed twenty-five million dollars, regardless of the amount of the judgment"). Without waiver of the foregoing, in no event should the supersedeas exceed $25 million.

III. CONCLUSION

[¶24] Accomplishing the ends of justice, and preventing injustice, requires that the Court stay enforcement of the judgment through all appeals – without a bond or with a substantially reduced bond. Thus, for the foregoing reasons, the Greenpeace Defendants respectfully request the following relief: That the Court provide such a stay without requiring the Greenpeace Defendants to post a bond or other security; *or*, alternatively, in the event the Court

deems a bond is required, the Court lower the amount of the appeal bond to $5 million total for the Greenpeace Defendants.

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