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Litigators of the Week: The Developer of the Dakota Access Pipeline Hits Greenpeace With a $667M Trial Verdict

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Our Litigators of the Week are Trey Cox, Collin Cox and Gregg Costa of Gibson, Dunn & Crutcher.

All three joined the firm in Texas over the past half decade: Trey Cox from Lynn Pinker Cox & Hurst in April 2020, Collin Cox from Yetter Coleman in August 2021 and Costa in September 2022 after serving as a judge on the U.S. Court of Appeals for the Fifth Circuit.

This week, after a trial that lasted more than three weeks, state court jurors in Mandan, North Dakota, awarded their clients Energy Transfer and the Dakota Access Pipeline nearly $667 million dollars against environmental organization Greenpeace and its affiliates. Jurors found that Greenpeace defamed the companies and incited protestors to trespass on their property and disrupt construction efforts.

Litigation Daily: Who is your client and what was at stake?

Trey Cox: We represented Energy Transfer and the Dakota Access Pipeline. Our clients were seeking to stand on the principle that their rights were violated based on the defendant's conduct relating to protests about the pipeline that our clients were developing in North Dakota.

How did this matter come to you and the firm?

Trey Cox: We have a long-standing and strong relationship with Energy Transfer. After the motion to dismiss phase, Energy Transfer sought seasoned trial counsel, anticipating that the case would likely go to trial. We assembled a trial team—myself, Collin Cox and Gregg Costa—with a collective track record of over a hundred trials to verdict. Any one of us could have led this case. Together, we formed and led an exceptionally formidable team.

Our strategy streamlined the case for trial, honing in on two key areas. First, what we termed the "ground torts," encompassing physical damage to the pipeline and equipment, along with increased security costs. We aimed to prove that the people on the ground in North Dakota were funded and coordinated by trainers sent and paid for by Greenpeace to organize anyone and everyone in the camps surrounding the construction. Second, we significantly narrowed the defamation claims to the nine most malicious statements, specifically designed to harm Energy Transfer 's standing in the international finance community. Our goal was to show that Greenpeace deceptively and maliciously communicated with the international finance community in a malicious and deceptive way to "toxify" (their words) any relationship with Energy Transfer.

Energy Transfer valued our experienced team and our aggressive, trial-focused approach.

Related People

Trey Cox

Collin J. Cox

Gregg J. Costa

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Who was on the trial team and how did you divide the work?

Collin Cox: It was an all Texas-based team. Trey Cox, Gregg Costa, Ben Betner, Travis Jones, Lara Kakish, Brian Sanders, Bryston Gallegos, Cody Johnson, Johanna Smith and Hunter Heck were all in North Dakota, along with our superstar paralegal, Wendy Cassidy. As always, it was a massive effort, and we divided up the work. Trey picked the jury, opened and closed. Gregg, Ben, Lara, Travis, Trey and I handled several key fact and expert witnesses. Our associates were fantastic, arguing evidentiary, legal, and jury instruction issues before trial as well as during morning and lunch sessions (without the jury) during the trial. And all of us have joined Gibson Dunn in the last five years.

Anti-pipeline protesters testified that many organizations provided support to them. Why was Greenpeace singled out here? And how did you make the case that the organization and its affiliates damaged the company?

Trey Cox: That testimony was flat-out false and a continuation of the deceptive, manipulative and self-serving Greenpeace narrative. Greenpeace was singled out because the documentation demonstrated that Greenpeace Inc., Greenpeace Fund and Greenpeace International dedicated significant money, personnel and resources to North Dakota with the sole purpose of disrupting pipeline construction. They supplied blockade materials, conducted surveillance on ET's personnel, construction sites and equipment and used that intelligence to create strategic maps. Greenpeace employees and Greenpeace-funded professional protestors distributed this information to demonstrators and actively trained and encouraged thousands of demonstrators to use it to obstruct and interfere with the pipeline's progress. Their actions went far beyond advocacy—they led, organized and directed a coordinated effort to trespass and impede lawful construction.

What were your key trial themes and how did you drive them home with the jury?

Trey Cox: We presented our key themes to the jury in visual form on a posterboard that read:

We Have Proved:

1. Greenpeace acted as one enterprise to stop DAPL at all costs.

2. Greenpeace's deceptions: Codewords, anonymity, and amnesia.

3. Greenpeace powered camp, funded professional trainers and organized thousands of protestors, causing delay and expense.

4. Greenpeace delayed DAPL construction and disrupted shipper relationships.

5. Greenpeace spread malicious, deceptive stories about Energy Transfer.

6. Greenpeace sabotaged Energy Transfer's banking relationships.

7. Greenpeace acted with malice throughout.

We had to use this board in closing because there were no graphics companies open over the weekend capable of owning this. So we went old-school—we used this board in closing and told the jury they could answer every question in the verdict form with these seven facts that we proved.

We drove these facts home with every witness we examined. We had documents from inside Greenpeace that supported and proved these points. Photos of the blockades and vandalism highlighted the destruction and delay resulting from the unlawful conduct. We also emphasized how Greenpeace witnesses refused to admit these facts taken from their

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own emails or take responsibility for their actions. Very few Greenpeace witnesses appeared at trial—a point we emphasized—so we included deposition clips of example after example of evasive answers.

What can others take from how Energy Transfer litigated this case?

Trey Cox: Energy Transfer is led by executives who have a strong sense of right and wrong. When they examined Greenpeace's actions, they saw a clear line had been crossed. Greenpeace not only organized and funded physical attacks on the pipeline and its construction crews but also spread malicious and deceptive narratives about Energy Transfer and law enforcement in Morton County.

Energy Transfer refused to stand by. They chose to take a stand and fight for what they believed in. Filing this case was not a necessity—it was a decision rooted in principle. They didn't have to invest the time and commit the resources that they did, but they knew they were right, and they had the evidence to back it up.

The damages awarded here appear to outstrip Greenpeace's assets by an order of magnitude. What message should other non-profit organizations involved in protest activities take from this verdict?

Gregg Costa: The message is that this conduct by Greenpeace is not acceptable. This verdict serves as a powerful affirmation of the First Amendment, which we embraced during trial because peaceful protest is a vital American right. But violent destructive protest and spreading lies is unlawful and unacceptable. This verdict clearly conveys that when this right to peacefully protest is abused in a lawless and exploitative manner, such actions will result in liability and accountability. We must remain vigilant in safeguarding our freedoms and ensuring that they are exercised responsibly.

What will you remember about this trial?

Trey Cox: What I'll remember most about this trial is the exceptional execution by our trial team. This case represents everything I set out to build in Texas—top-tier trial lawyers handling high-stakes cases. From the beginning, our goal has been to create the best trial practice in Texas, and this was a true Texas team. And every one of our lawyers, including a first-year associate, had a chance to stand up in court and perform.

We had a strong game plan, and every team member played a critical role, working seamlessly together. It was the most cohesive and high-performing trial team I've ever been a part of. This is exactly why I joined Gibson five years ago—to take on landmark cases like this with outstanding colleagues.

Collin Cox: I completely agree with Trey that our team made a difference. In addition, I'll always remember what a privilege it was to try the case in North Dakota and work with so many great people in the state. We presented five law enforcement witnesses who served with distinction throughout the violent protests eight years ago. It was incredibly gratifying to give them a platform to tell their stories. Judge James Gion worked tirelessly to make the proceedings fair for everyone. He and his court staff worked with unfailing grace and good cheer in the midst of significant media attention and controversy (including attempts by Greenpeace to stop the trial midstream). And our jurors worked very hard. They took careful notes for three weeks and ultimately completed a 40-page verdict form. There's no better moment in the law than waiting to hear the jury's answer to the first question, and I'll always remember the tension of that moment.

Gregg Costa: The verdict reaffirmed that trial by jury is the best way we've ever come up with to find the truth. That truth-finding function of trials is more important than ever in today's world where lies spread so easily. No matter how many times I've seen it happen, I never lose the sense of awe seeing a group of citizens—who would likely disagree on so many issues in our society—carefully consider the evidence and all agree on what the truth

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is in a dispute. And being part of the special group of lawyers we had in this case fighting for the truth, well, that's as good as it gets as a lawyer—it's why you give up a lifetime appointment.

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