Preliminary Injunctions and Environmental Litigation: Maintaining Judicial Discretion in Security Bonds

INTRODUCTION

In 2024, the Third Circuit Court of Appeals upheld an intermediary district court's ruling in *Boynes v. Limetree Bay Ventures, LLC*.[1] The District Court for the Virgin Islands had granted a preliminary injunction, compelling the defendant Limetree Bay Ventures to continue mitigating the results of its oil refinery's pollution with a "bottled-water program," in which the defendant was responsible for distributing water to those most affected by the toxification of the water supply.[2] To account for the plaintiffs' indigency, the court issued an injunctive bond—a court-ordered financial guarantee for a defendant wrongfully enjoined under a preliminary injunction—substantially lower than that which would fully compensate the defendant in the event of wrongful enjoinment.[3] On appeal, Limetree Bay Terminals argued that the district court abused its discretion in granting the preliminary injunction's lowered bond size. The Third Circuit rejected their argument and affirmed the lower court.[4]

The Third Circuit's decision in this case demonstrates the importance of maintaining broad judicial discretion in setting the bond amounts attendant to preliminary injunctions. Absent such discretion, the interests of the movant—which the preliminary injunction is principally designed to protect—would be substantially undermined. In environmental cases, injured plaintiffs would lose out on the only legal avenue they have in attaining immediate and essential relief.

I. LEGAL BACKGROUND

A. Preliminary Injunctions

Important to understanding the necessity for discretion in injunctive bond sizing is the traditional function of its legal backdrop: the preliminary injunction.

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1. Boynes v. Limetree Bay Ventures LLC, 110 F.4th 604, 608 (3d Cir. 2024).
2. Boynes v. Limetree Bay Ventures, LLC, No. CV 2021-0253, 2023 WL 3166603, at *1 (D.V.I. Apr. 28, 2023).
3. Boynes v. Limetree Bay Ventures, LLC, No. CV 2021-0253, 2023 WL 4637319, at *20-22 (D.V.I. July 20, 2023).
4. *Boynes*, 110 F.4th at 611-12.

Federal Rule of Civil Procedure (FRCP) 65(a) permits federal courts to issue preliminary injunctions. The principal purpose of a preliminary injunction is to maintain the "status quo," or to maintain the existing situation between parties before a trial's resolution to avoid "irreparable harm" caused by shifts in circumstance or a party's disposition.[5] But the rule provides little to no guidance for its application. Courts have thus enjoyed broad discretionary power in deciding whether and how to compel a party's obligations before the resolution of a trial, while emphasizing principles of equity.[6]

What guidance courts do have in preliminary injunction issuance is outlined in precedent, which prescribes a stringent application. The Supreme Court distilled the test in the landmark decision, *Winter v. NRDC*, which obligates courts to consider: (1) the likelihood of the success of the claims on their merits; (2) the likelihood that irreparable harm will occur in the absence of injunctive relief; (3) the balance of equities between the parties; and (4) whether an injunction is in the public interest.[7] While interpretations of this test have varied, the emerging standard nonetheless imposes a high burden of proof: "a clear showing" by the movant as to *each* prerequisite, such that issuance of preliminary injunctions remains "an extraordinary and drastic remedy."[8] The *Winter* decision represented a marked departure from the previous trend in preliminary injunction application, which required only a "possibility" of irreparable harm, and a lower standard for proof of success on the merits.[9] As a result of the more stringent standard that the Supreme Court outlined, it is now more difficult for movants to obtain injunctive relief in the environmental context.[10]

Winter has spawned significant disagreement among circuit courts on what the respective weight of these factors should be in environmental cases,[11] with courts overemphasizing equity and public interest factors in an effort to combat the newfound difficulty in obtaining injunctive relief.[12] However, the Supreme

5. Don J. Frost Jr., *Preliminary Injunctions as Relief for Substantial Procedural Violations of Environmental Statutes: Amoco Production Co. v. Village of Gambell*, 4 ALASKA L. REV 105, 105 (1987).

6. *Id.*

7. Winter v. Nat. Res. Def. Council, 555 U.S. 7, 22-32 (2008).

8. Sierra Club v. Atlanta Reg'l Comm'n, 171 F. Supp. 2d 1349, 1356 (N.D. Ga. 2001); *Winter*, 555 U.S. at 21.

9. *Winter*, 555 U.S. at 21.

10. *See* Kevin J. Lynch, *Preliminary Injunctions in Public Law: The Merits*, 60 HOUS. L. REV. 1067, 1077 (2023).

11. *See* George P. Sibley III and Jonathan L. Caulder, *An Empirical Look at Preliminary Injunctions in Challenges Under Environmental Protection Laws*, 47 ENVT'L L. REP. NEWS & ANALYSIS 10397, 10399-400 (2017) (describing a three-way circuit split, with one cluster faithfully applying *Winter*, a second cluster reading *Winter* narrowly and weighing the prongs on an ad hoc basis in keeping with pre-*Winter* courts, and a third cluster in which *Winter*'s import remains unaddressed).

12. *See id.* at 10401 (concluding that these differences in interpretation have yielded an average success rate of 29 percent for preliminary injunctions in environmental cases).

Court made one thing clear: "[t]he first two factors … are the most critical."[13] While discordant circuit interpretations in factor balancing have done some work to re-level the playing field for plaintiffs, a faithful textual interpretation of *Winter* demands a high burden of proof for each factor, with an emphasis on success on the merits and a clear showing of irreparable harm.[14] However, if successful in the four-factor test, a movant faces yet another hurdle: the security bond.

B. Injunctive Bonds

Consider now FRCP 65(c): Security.[15] The rule provides that a preliminary injunction will have an attendant security, or bond, to be posted by the movant in an amount that the court considers "proper" to compensate a defendant in the event of wrongful enjoinment.[16] In other words, to seek injunctive relief in the interim before a trial is resolved, a movant or movants stake their own money on the success of their case. Thus, movants who cannot post the bond in its entirety may fail to secure injunctive relief regardless of their success in the four-part test. Under FRCP 65, a court has wide discretion over both the deployment of a preliminary injunction and the attendant injunctive bond; however, while the former's use is substantively limited, as discussed above, the latter remains governed only by what a court deems "proper."[17]

Originally, the injunctive bond was developed as a mechanism that would ensure the "defendant's protection," or to guarantee a compensatory fund for a defendant.[18] Modern courts, however, have shifted to interpret the purpose more broadly to include the interests of the defendant, the plaintiff, and the court.[19] This modern approach envisions that bond issuance should not only take into account the interests of the defendant in mitigating the effects of wrongful enjoinment, but also incentivize the plaintiffs to "think carefully" about the risks.[20] Adding this consideration has widened the scope of what a court may deem proper. This modern trend is often used in the environmental context,[21] where corporate defendants with significant resources can monetarily leverage and outlast environmentally affected plaintiffs.[22]

Predictably, the wide discretion over the size of injunctive bonds has also engendered significant disagreement among the circuits, with some even

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13. Nken v. Holder, 556 U.S. 418, 434 (2009).
14. *See id.* at 434-35.
15. Fed. R. Civ. P. 65(c).
16. *Id.*
17. *See id.*; *see also supra* Part I.A.
18. Erin Connors Morton, *Security for Interlocutory Injunctions Under Rule 65(c): Exceptions to the Rule Gone Awry*, 46 HASTINGS L.J. 1863, 1864 (1995).
19. *Id.* at 1866.
20. *See* Boynes v. Limetree Bay Ventures LLC, 110 F.4th 604, 611 (3d Cir. 2024).
21. *See* Sibley & Caulder, *supra* note 11, at 10401.
22. *See* Molly Prothero, *Corporate Power and Environmental Justice: How Corporate Law Exacerbates Environmental Harm and its Inequitable Distribution*, SYSTEMIC JUSTICE J., 1, 2-3 (2021).

allowing for complete waiver altogether.[23] Some courts, like the district court in *Boynes*, have used that discretion to ensure that movants are not barred from relief solely by dint of their indigency.[24] As a result, calls for structured bond setting emerged and have yet to be resolved.[25] Central to the question of bond discretion is whether the interest of the defendant in mitigating the effects of wrongful enjoinment is undermined to such an extent that judicial discretion should be accordingly limited.[26] As we will see, the threat to the defendant's interests is not dire enough to warrant such limitation. *Boynes,* in particular, illustrates the importance of retaining judicial discretion in full, to secure equitable jurisprudence where irreparable harm would otherwise manifest without it.

II. CASE HISTORY

A. The District Court Decision

In early 2021, after facing millions of dollars in fines for local air and water pollution, which resulted in a decade-long closure, one of the largest oil refineries in the United States restarted its operations in St. Croix, Virgin Islands.[27] Less than a week later, the refinery, owned by the defendant Limetree Bay Terminals, LLC, once again began to pollute, spraying "heavy-oil mist" onto residents' properties and contaminating their water cisterns, on which they principally relied for water.[28] The emissions continued for months, with smoke clouds and oil mists gaining in frequency and intensity.[29] Finally, the EPA issued an order to cease operations.[30] Despite the order, many residents still had no access to clean water.[31] Several dozen residents then sued Limetree Bay Terminals in separate class actions, seeking damages and injunctive relief for a slate of alleged injuries under the Clean Air Act and several territorial acts.[32] The court put these suits on hold for about a year, during which the parties negotiated a mediation plan. The plan provided, *inter alia*, that Limetree Bay Terminals would construct a "program to provide free bottled water" to be distributed to

23. Morton, *supra* note 18, at 1864.

24. *See, e.g.*, *Boynes*, 110 F.4th at 611; *see also* Temple Univ. v. White, 941 F.2d 201, 219 (3d Cir. 1991) (holding that a district court was "well within its broad discretionary power" when it decided to waive the Rule 65(c) bond requirement after finding that the balance of equities weighed overwhelmingly in favor of the party seeking the injunction).

25. *See e.g.*, Morton, *supra* note 17.

26. *See id.*

27. Boynes v. Limetree Bay Ventures, LLC, No. CV 2021-0253, 2023 WL 3166603, at *1 (D.V.I. Apr. 28, 2023).

28. *Boynes*, 110 F.4th at 608.

29. *Boynes*, No. CV 2021-0253, 2023 WL 3166603, at *2.

30. *Id.*

31. *Boynes*, 110 F.4th at 608.

32. *Boynes*, No. CV 2021-0253, 2023 WL 3166603, at *4.

approximately 20,000 residents and set to expire in September of 2022.[33] After the date came to pass, and the program expired, the plaintiffs sought a preliminary injunction to enjoin the defendants from terminating their water bottle distribution.[34] Under the following analysis, the court granted the injunction.[35]

Following the holding in *Winter*, the district court set out the four factors. First, the court held that the plaintiffs had shown a "substantial probability of success" as to their claims that the defendants negligently violated the pertinent laws.[36] Second, under the irreparable harm prong, the court defined "irreparable" as a harm which "cannot be redressed by a legal or an equitable remedy following a trial," thus excluding all harms not currently present, and which might be redressed monetarily.[37] The court agreed that due to the contamination of the plaintiffs' water cisterns and their financial limitations, irreparable harm was satisfied for those plaintiffs who could not afford water "without making impermissible sacrifices."[38] Third, the court considered a "balance of hardships," weighing the basic necessity for water against the burden imposed on a defendant in the event of an injunction.[39] The court found that because Limetree Bay Terminal's financial resources made them better suited to bear the costs of providing water, the equities tipped in favor of the plaintiffs.[40] Lastly, the court considered the public interest at stake, which required them to "look beyond the parties' respective interests" and contemplate the consequences of an injunction for the community as a whole.[41] The court emphasized the presupposed necessity of access to clean water generally, as well as the community's interest in knowing that "should they suffer similar harm to plaintiffs, courts will be willing…to step forward and grant relief."[42]

In an ensuing hearing, the court then set out to consider the security bond under FRCP 65(c).[43] Addressing first the issue of complete waiver, the court reflected on the statutory language of Rule 65(c) and asserted the Third Circuit standard that "instances in which a bond may not be required are so rare that the requirement is almost mandatory."[44] As such, the bond is determined in accordance with two interests: (1) maintaining a source of compensation for the

33. *Id.* at *2.
34. *Id.* at *3.
35. *Id.* at *24.
36. *Id.* at *8 (internal quotation omitted).
37. *Id.*
38. *Id.* at *21.
39. Boynes v. Limetree Bay Ventures, LLC, No. CV 2021-0253, 2023 WL 3166603, at *21-22 (D.V.I. Apr. 28, 2023).
40. *Id.* at *22-23.
41. *Id.* at *23.
42. *Id.*
43. Boynes v. Limetree Bay Ventures, LLC, No. CV 2021-0253, 2023 WL 4637319, at *20 (D.V.I. July 20, 2023).
44. *Id.*

defendant if they are wrongfully enjoined, and (2) to deter rash action and force the plaintiff to "think carefully" before accepting interlocutory relief.[45] The court settled on an amount of $50,000; an amount that the court noted was "minimal" in comparison to the cost Limetree Bay Terminals incurred in funding the water bottle program.[46]

B. The Appellate Decision

On appeal, the defendants argued that the bond amount violated FRCP 65(c) by not totaling an amount that would adequately compensate them in the event of wrongful enjoinment, and thus, they were not properly protected.[47] The district court agreed that the bond amount was "certainly minimal relative to the anticipated costs associated with the water program."[48] Ideally, the Third Circuit notes, the bond amount would be one that fully compensates a wrongfully enjoined defendant; however, their discretion in deciding what is "proper" endowed the district court with the power to factor in a plaintiff's indigency and ensure that, by itself, indigency will not bar plaintiffs from finding relief.[49] This discretion, however, was not without limits. Before awarding a smaller bond, the Third Circuit agreed with the lower court in both that it must find that the plaintiffs cannot post the full amount, and that a court "must carefully balance their ability to pay along with the hardships that each side faces."[50]

III. ANALYSIS

The appellate and district court decisions in *Boynes v. Limetree* illustrate why courts justifiably wield their discretion to lower security bonds below that which would compensate the defendant. First, these decisions demonstrate how a defendant's interest in compensation is already protected by a *Winter*-faithful application of the four-factor preliminary injunction test, wherein the first two factors are given priority.[51] Similarly, the defendant's interest is further insulated within the bond analysis itself, seen in the risk-averse nature of the bond's goals. Second, to the extent that the defendant's interest is incompatible with the plaintiff's, the *Boynes* court appropriately prioritizes the plaintiff's interest in securing relief by way of the broad discretionary standard. While the injunctive bond does in part aim to protect the defendant, the courts in *Boynes* recognized the unacceptable danger posed by prioritizing the defendant's interest to the extent that the plaintiff's interest in relief is defeated.

45. Boynes v. Limetree Bay Ventures LLC, 110 F.4th 604, 611 (3d Cir. 2024).
46. *Id*. at 609.
47. *Id.* at 611.
48. *Id.* at 609.
49. *Id.* at 611.
50. *Id.*
51. *See id.* at 609; *see also* Nken v. Holder, 556 U.S. 418, 434 (2009).

To see why *Winter*-faithful preliminary injunctions justify broader discretion down the road in the bond issuance, consider the relationship between the preliminary injunction and the injunctive bond. While an injunctive bond is discrete in its issuance from that of the larger preliminary injunction, they share significant analytical real estate in their balancing of party interests. As the Third Circuit demonstrates in this case, the relatively wider discretion a court enjoys in assigning security bonds allows the interests of the plaintiff to more easily overcome those of the defendant than they might in the larger preliminary injunction analysis. At first blush, it may appear that this discretion leaves the defendant unacceptably vulnerable. However, it is important to recall that an injunctive bond is but one part of the larger legal motion: the preliminary injunction. As such, wider discretion should be exercised insofar as the goals of the former are ultimately subject to the goals of the latter. In many cases, asserting otherwise would defeat the claim to relief which the court has already concluded is legitimately warranted. This would allow substantially likely, non-monetary, irreparable harm to take root for the sake of only potential, unlikely, monetary harm. In environmental cases, this would mean denying relief for those in immediate need of access to clean water, clean air, clean soil, and other necessities.

To be sure, the defendant's interest in protection is a legitimate one. A defendant wrongfully enjoined typically has no alternate cause of action by which to recover losses resulting from a preliminary injunction.[52] The defendant's interest in protection is made further salient by the fact that a preliminary injunction hearing is attenuated in comparison to a full trial on the merits, and the defendant will necessarily have less time and a narrower breadth of due process to prepare for it.[53] However, to the extent that a defendant is left vulnerable by a reduced bond, their risk exposure is in large part mitigated by both preliminary and injunctive bond analyses.

The Court in *Winter* describes a preliminary injunction as "an extraordinary remedy never awarded as of right."[54] The exigent nature of a successful preliminary injunction described here is reflected in the stringent four-part test consolidated in the opinion, which directly or effectively insulates the defendant before bond security is ever established. Consider the burden of proof for the irreparable harm. As a result, many environmental practitioners feel that *Winter* has "a stifling effect" on environmental preliminary injunctions.[55] Consider the second prong outlined in *Winter*. The Court in *Winter* explicitly made it more difficult in environmental cases for a plaintiff to prove irreparable harm, describing the oft-used standard, a "possibility" of irreparable harm, as "too

52. Morton, *supra* note 18, at 1866.
53. *Id.* at 1864.
54. *Winter*, 555 U.S. at 24.
55. Sarah J. Morath, *A Mild Winter: The Status of Environmental Preliminary Injunctions*, 37 SEATTLE U. L. REV. 155, 159 (2013).

lenient."[56] Instead, the Court replaced the standard with one that "requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely*."[57] Moreover, the Court's standard of irreparable harm instructs that the injury must be immediately threatened, and unavailing to redress of any other kind.[58] This is not an easy bar to meet. Indeed, in *Boynes*, the court denied the water bottle program to all plaintiffs except those who could not purchase water "without trading off other basic necessities."[59] The defendant, by comparison, shares no equivalent gravity of harm. This is reflected in the first prong of the preliminary injunction test, in which the plaintiff must show a "substantial probability of success" with regard to their claims in the overarching case.[60] A decision on this point automatically demonstrates a low chance of wrongful enjoinment compared to the plaintiff's high chance of irreparable harm. Finally, as noted above, the first two factors are the most pressing out of the four, which necessarily minimizes the role of equity balancing and public interest—rendering the factors that the court could most easily leverage in favor of plaintiffs less important.[61]

Furthermore, despite broad discretion in determining bond sizes, the standard approach articulated in *Boynes* still contains a significant guardrail for the defendant's interest in avoiding wrongful enjoinment. Consider again the primary goals of the test: (1) to provide for compensation in the event of wrongful enjoinment and (2) to force plaintiffs to "think carefully" before moving forward.[62] The second goal spreads the risk-averse stance towards wrongful enjoinment among both parties, effectively requiring the plaintiff to stake their bond on the success of their larger case. Note that while a reduced bond like the one in *Boynes* is minimal for the sake of the defendant's compensation, it was a very substantial sum to the St. Croix locals affected by the oil refinery pollution.[63] Furthermore, broad judicial discretion means frequent judicial scrutiny. As the Third Circuit held, courts are obligated to honor the dual goals of compensation and forcing plaintiffs to think carefully in every case that they can, and appeals decisions are examined specifically for abuses in discretion on this point.[64] When a court reduces a bond below what would fully compensate a defendant, to "low enough that the plaintiffs can pay it," it must still specifically "find that the plaintiffs cannot post the full amount and must

56. *Winter*, 555 U.S. at 22.

57. *Id*.

58. *Id*.

59. Boynes v. Limetree Bay Ventures, LLC, No. CV 2021-0253, 2023 WL 3166603, at *1 (D.V.I. Apr. 28, 2023).

60. *Id.* at *8.

61. *See* Sibley & Caulder, *supra* note 11, at 10401.

62. Boynes v. Limetree Bay Ventures LLC, 110 F.4th 604, 611 (3d Cir. 2024).

63. *Id.*

64. *Id.*; *see also* Sprint Commc'ns Co. v. CAT Commc'ns Int'l, Inc., 335 F.3d 235, 239 (3d Cir. 2003) (writing that "[w]e normally review district court judgments fixing the amount of an injunction bond for abuse of discretion").

carefully balance their ability to pay along with the hardships that each side faces."[65]

However, while compensation of the defendant remains a goal, in practice, its importance in the injunctive bond analysis is minimized wherever a court elects to do so. The Third Circuit did confirm that the defendant's interest in compensation is a part of the balancing, but it also demonstrates that bond issuance does not have the same factor-balancing obligations that a *Winter*-faithful preliminary injunction analysis does.[66] Per the broad judicial discretion courts enjoy, there is no statutory or precedential obligation to weigh the goals of the injunctive bond equally; there is only what the court deems "proper."[67] As such, the Third Circuit in *Boynes* upholds the modern discretionary trend of considering the defendant's interest in compensation second to the plaintiff's ability to pay.[68] Without this discretion, the very purpose of injunctive relief—to alleviate pressing pre-judgment injury—would be severely undermined, and many indigent movants' chance at relief would disappear. If a preliminary injunction fails because movants are unable to come up with the cash needed to post the bond, they must then wait to be granted relief on the merits of the case. At that point, the harm at which the preliminary injunction is aimed has most likely taken root already. If the plaintiffs in *Boynes* were required to post a bond amount that fully compensated the defendant for the water bottle program, they would have never succeeded in the preliminary injunction movement. In that event, it would have been weeks or months without the ability to access clean water.[69] To wait for the case to be won on the merits, while affording more protection for the defendant, would have been to forfeit the relief they needed in the immediate.

To be sure, if greater protection for a defendant is needed, it should be bolstered within the preliminary injunction test and not in the injunctive bond analysis. This could take the form of eliminating inconsistent applications of the preliminary injunction four-part test and enforcing stricter adherence to the *Winter* standard. Some errant courts, like the Ninth Circuit, allow for a sliding scale approach to the four-part test.[70] Under this approach, courts allow for a particularly strong showing of the equitable and public interest factors to lessen the burden of showing the first two prongs, contrary to the holding in *Winter*.[71] Stricter adherence to the *Winter* standard would further reduce the risk of wrongful enjoinment for the defendant and dissuade frivolous claims to injunctive relief without unjustifiably endangering a plaintiff's claim to relief.

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65. *Boynes*, 110 F.4th at 611.

66. *See* Nken v. Holder, 556 U.S. 418, 434-35 (2009).

67. *See* Fed. R. Civ. P. 65(c).

68. *See Boynes*, 110 F.4th at 611.

69. Boynes v. Limetree Bay Ventures, LLC, No. CV 2021-0253, 2023 WL 3166603, at *1 (D.V.I. Apr. 28, 2023).

70. *See* Sibley & Caulder, *supra* note 11, at 10400.

71. *Id.*

Boynes, however, remains a potent example of why discretion needs to be maintained at the level of the injunctive bond, due to its potential to undermine the very purpose of preliminary injunctions and stop plaintiffs in their tracks simply for the sake of their indigency.

IV. CONCLUSION

Boynes v. Limetree Bay Terminals is a salient example of why courts should enjoy wide discretion over injunctive bond sizing. In the absence of the judicial discretion to lower a bond under that which would fully compensate a defendant, indigent plaintiffs in environmental cases would lose an essential avenue of relief, one that provides for immediate relief where a protracted trial would otherwise fail to do so. The injunctive bond is but one piece of injunctive relief, the objective of which is to avoid irreparable injury to the plaintiff. To overvalue the interest of the defendant is to ignore the more substantial interest of the moving plaintiff to avoid irreparable harm in the short term.

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