LAW360®

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Transportation Cases To Watch In 2025

By **Linda Chiem**

Law360 (January 1, 2025, 8:01 AM EST) -- The Boeing Co.'s 737 Max criminal conspiracy case, consolidated D.C. Circuit litigation targeting new vehicle fuel-economy standards, and a Texas high court battle over a massive trucking accident verdict are among the cases that transportation attorneys are watching closely in 2025.

The cases raise important questions about oversight of an American aerospace titan and the safety of its aircraft, the scope of federal agencies' rulemaking powers and trucking companies' liability in highway accidents.

Here, Law360 takes a look at a few cases to watch in the new year that will impact transportation.

Boeing 737 Max Plea Deal

A Texas federal judge in December **rejected** Boeing's plea agreement with the U.S. Department of Justice, spelling fresh complications for the embattled American aerospace titan and the legal saga over its 737 Max jets.

U.S. District Judge Reed O'Connor in Fort Worth, Texas, on Dec. 5 vetoed Boeing's plea deal in its criminal conspiracy case and flagged two major issues: the DOJ's policies of considering diversity, equity and inclusion when selecting an independent compliance monitor, and the court's "erroneously marginalize[d]" role in picking and overseeing that monitor.

What might've seemed like a boilerplate reference by the DOJ and Boeing to their DEI commitments ended up hampering their chance at getting the court's blessing on the finalized deal under Federal Rules of Criminal Procedure 11(c)(1)(C), which is typically known as a "take it or leave it" deal.

Boeing had sought to avoid a high-profile criminal trial over the deadly Lion Air Flight 610 and Ethiopian Airlines Flight 302 crashes of 2018 and 2019, respectively, by pleading guilty to conspiring to defraud U.S. regulators over the 737 Max 8's development and agreeing to pay millions more in penalties and be scrutinized by an independent compliance monitor for three years.

It's unclear what the DOJ and Boeing's **next steps** will be and how they might rework the agreement to address the judge's concerns. But the case raises important questions about transparency and accountability in compliance monitorships, especially when public trust in the safety of Boeing's aircraft is at stake.

"Ultimately, the monitorship selection process — what monitors do and their effectiveness — has been kind of a mess for a long time … so I don't really think DEI is the source of the problem here," Todd Haugh, associate professor of business law and ethics at Indiana University's Kelley School of Business, told Law360. "I think it's a larger question about how we think about [a] monitor's role and what the skill sets of that monitor are, and how we judge effectiveness."

The case is U.S.A. v. The Boeing Co., case number 4:21-cr-00005, in the U.S. District Court for the Northern District of Texas.

Trucking Co. Battles 'Nuclear' Verdict

Werner Enterprises, one of the nation's largest motor carriers, is seeking to escape a $116 million jury verdict that found it mostly liable for a 2014 fatal crash in a **Texas Supreme Court case** with

weighty implications for plaintiffs' personal injury lawyers and transportation defense lawyers.

The dispute is one of the earliest cases to spawn supersized or so-called nuclear verdicts that have rattled the trucking industry. During **oral arguments** in early December, Werner's attorneys told Texas' justices that a Houston jury's $90 million verdict in 2018 — which later climbed to more than **$116 million** with post-judgment interest — against Werner completely disregards a century-old legal standard for determining negligence.

The case stems from a December 2014 accident that killed a 7-year-old boy and paralyzed a 12-year-old girl. At the time, a motorist driving a pickup truck in icy conditions along Interstate 20 skidded across a large grassy median into the lane with oncoming traffic, and plowed into a Werner big rig.

Even though the driver of the Werner big rig didn't cause the accident and was operating it below the posted speed limit of 75 miles per hour, lawyers for the injured plaintiffs argued that the Werner driver could still be held liable for not taking care to drive at a speed "at which an ordinarily prudent person would operate a vehicle under the same or similar circumstances."

At stake is the "scope of duty owed by a motor carrier to the motoring public, the admissibility of various company safety policies, and other issues that are front-of-mind for motor carriers, freight brokers, and shippers concerned about the 'nuclear' verdicts that constitute today's existential risks for providing or using commercial transportation services," according to Marc Blubaugh, partner and co-chair of the transportation and logistics practice group at Benesch Friedlander Coplan & Aronoff LLP.

"While it is a Texas case — an admittedly large market — the case will be instructive to courts far beyond the Lone Star State, for better or for worse," he said. "The plaintiffs' personal injury bar is renowned for its collaboration and aggressively pursues and seizes upon novel claim theories like those successfully advanced here."

The case is Werner Enterprises Inc. et al. v. Jennifer Blake et al., case number 23-0493, in the Supreme Court of Texas.

Fuel Economy Litigation

The Sixth Circuit is overseeing consolidated legal challenges to NHTSA's June 2024 final rule for the next batch of so-called corporate average fuel economy, or CAFE, standards covering passenger cars and light trucks for model years 2027-2031 and heavy-duty pickup trucks and vans for model years 2030-2035.

Republican-led states and fuel industry groups claim the U.S. DOT and NHTSA overstepped their authority by promulgating new vehicle fuel-economy standards that amount to an **unlawful electric vehicles mandate**. They've argued that Congress expressly prohibited the NHTSA from considering EVs when setting automobile fuel-economy standards but allowed automakers to count any EVs they voluntarily produce toward compliance with the standards.

"NHTSA, however, is determined not to let these limits on its statutory authority stand in its way. So it reads exceptions into the statute that are not there, to seize a power that Congress did not grant it, in service of a policy agenda that Congress has never embraced," the states and fuel groups said. "In so doing, NHTSA violates the first principle of administrative law: that agencies may not rewrite their governing statute to suit their own sense of how it should operate."

Meanwhile, environmental groups such as the Sierra Club, Conservation Law Foundation and Natural Resources Defense Council have claimed the standards are "unreasonably weak" and don't go far enough to meaningfully combat climate change.

They've argued in court documents that the calculus the NHTSA used to come up with this latest batch of standards isn't the "maximum feasible" level of fuel efficiency that automakers can achieve every year. As such, the agency fell short of its obligations under the Energy Policy and Conservation Act.

The consolidated challenge is MCP No. 189 Corp. Avg. Fuel Econ (NHTSA-2023-0022), case number

24-7001, in the U.S. Court of Appeals for the Sixth Circuit.

Airport Flight Path Emissions

A Washington federal judge in November **rebuffed** Delta Air Lines and Alaska Airlines' bid to dismiss a proposed class action from property owners and residents who live near Seattle-Tacoma International Airport over alleged flight-path pollution.

Clark Hill PLC's Roy Goldberg said that the case "could have major consequences for the ability of airports and their airlines to be able to operate and expand flight activity that will be desperately needed in ensuing years." He noted that there is also the "potential high financial burden to be imposed on airlines, local taxpayers and the federal treasury merely for the aviation industry to be able to maintain operations, let alone sustain necessary expansion."

The plaintiffs, who live within a five-mile radius of SEATAC, alleged that pollution caused by the airport's operations has caused physical harm, death and property damage. They asserted claims for negligence, battery, continuing intentional trespass, and public nuisance. They also asserted an inverse condemnation claim against the Port of Seattle. The judge indicated that it's still too early to decide whether the plaintiffs' claims are **preempted** by federal law.

Goldberg said the dispute raises questions about the scope of preemption, and how such litigation might impact communities' efforts to enhance airport operations to serve the burgeoning population growth in passenger levels in major U.S. cities, among other things.

The case is Codoni et al. v. Port of Seattle et al., case number 2:23-cv-00795, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Y. Peter Kang and Rachel Riley. Editing by Kelly Duncan and Emily Kokoll.
