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Transportation Cases To Watch In 2021

By **Linda Chiem**

Law360 (January 3, 2021, 12:02 PM EST) -- A personal jurisdiction battle affecting the legal exposure of automakers and other product manufacturers, delivery drivers' feud with gig-economy companies over their independent contractor status and clashes over the scope of federal preemption are among the court battles that transportation attorneys are watching in 2021.

For transportation companies, especially those that do business across state lines, the cases could create murkier rules governing how they draft their contracts and worker agreements, and heighten their overall exposure to legal liability. At the same time, these legal clashes have the potential to provide enhanced protections for workers and consumers that some advocates have said are long overdue.

Here's a breakdown of some of the high-profile legal battles that transportation attorneys will be tracking closely in 2021.

SCOTUS Weighs Jurisdictional Fight Over State Defect Suits

Automakers and other product manufacturers are eagerly anticipating a U.S. Supreme Court decision that will draw lines on where companies can be sued when their products cause injuries. After hearing oral arguments in October, the justices will clarify the limits of specific personal jurisdiction and litigants' due process rights in a pair of cases examining whether Ford Motor Co. can be sued in Montana and Minnesota over accidents involving used cars with purportedly defective tires or airbags.

"If the court rejects a requirement to show proximate cause between the injury and the defendants' forum conduct, manufacturers could be subject to suit in any state where they sell their products, regardless of whether the claims in the case are connected to their activity in the forum state," said April Ross, vice chair of Crowell & Moring LLP's mass tort, product and consumer litigation group. "The case will have ramifications for a range of industries and could dramatically affect where and how individuals can sue corporations for personal injuries. The transportation industry — and particularly automobile manufacturers — stand to feel the greatest impact as their products are frequently moved across state lines after purchase."

Ford is seeking to have the justices reverse a pair of 2019 decisions from the Montana Supreme Court and Minnesota Supreme Court that kept alive product defect and negligence lawsuits from plaintiffs injured in those states — but whose specific vehicles were first bought out of state — that Ford

contends tramples on due process. The automaker has argued that the decisions enabled a "jurisdictional free for all" by clearing a path for companies hit with defect claims to be hauled into state courts based on tenuous connections or even no connections at all to those states.

The cases stemmed from 2015 accidents involving Ford Explorer and Crown Victoria vehicles. Ford claims it designed, assembled and sold the vehicles outside of Montana or Minnesota, and the company doesn't have strong enough links to either state to justify it being sued there for state-based product defect, negligence and other claims.

Ford has argued that Montana's and Minnesota's justices ignored the long-held causal standard that should apply in cases like these. The U.S. Supreme Court held in 2017's Bristol-Myers Squibb Co. v. Superior Court of California that the due process clause requires that both the defendant has "purposefully availed itself of the privilege of conducting activities within the forum state" and that the plaintiff's claims "'arise out of or relate to' the defendant's forum conduct."

"At a minimum, the Ford cases show that the Supreme Court remains interested in policing expansive state court exercises of personal jurisdiction, particularly when lower courts subject nonresidents to specific personal jurisdiction where they have little, if any, suit-related connections to the forum," Morrison & Foerster LLP litigation partner Grant Esposito said. "Over the past decade, the Supreme Court has reviewed case after case — reversing the lower court every time in unanimous or near-unanimous decisions."

Brian Matsui, a partner in Morrison & Foerster's appellate and Supreme Court practice, said a ruling for defendants finding no personal jurisdiction "could be a very big deal — as it might require that the specific article (here, a truck) that is at issue in the lawsuit be sold in the state trying to exercise jurisdiction."

On the other hand, the plaintiffs have argued for narrow ways to win, according to Matsui.

"They say that it's enough that the same model of truck is marketed and sold in the state, even if the particular truck at issue wasn't. A win for the plaintiffs in Ford might not be very expansive, because defendants still could avoid personal jurisdiction by not marketing or selling certain models in state."

But the Ford case may set up the next big case — the one the Supreme Court hasn't yet had an opportunity to really opine on in its run of recent personal jurisdiction cases, Matsui said.

And that concerns "what meets the purposeful availment requirement — that is, how much or little does a defendant need to target the forum state with its products, especially in the internet age," he said.

Kevin Mahoney, an attorney with Kreindler & Kreindler LLP who represents plaintiffs in personal injury litigation, said Ford's complicated view of specific personal jurisdiction would force courts to determine whether a defendant's in-state contacts "caused the plaintiff's claims."

Meeting that burden may be impossible to establish without prolonged discovery, and such complex pre-merits inquiries will only prolong civil litigation and burden an already very busy judiciary, he said.

"The court needs to give trial judges enough flexibility to enable them to make a case-by-case determination based on the unique factual posture of the case and who the defendant is. Ford wants

the same due process protections as 'Joe the Mechanic,'" Mahoney said. "But the reality is that Ford is a multibillion-dollar corporation that has a substantial presence throughout the country. It doesn't violate the Constitution to force this multibillion-dollar corporation to defend itself in the very states where its defective products injure or kill people."

The cases are Ford Motor Co. v. Montana Eighth Judicial District Court et al., case number 19-368, and Ford Motor Co. v. Adam Bandemer, case number 19-369, in the Supreme Court of the United States.

Amazon Spars With Drivers Over Employee Status

E-commerce giant Amazon petitioned the Supreme Court in November to undo a split Ninth Circuit ruling, which the company claims upended the standard for enforcing workers' arbitration agreements by allowing Amazon Flex drivers making only local deliveries in one state to pursue their employment claims in court.

The Ninth Circuit majority in August had followed the First Circuit's lead in July's Waithaka v. Amazon decision, finding unequivocally that the Amazon Flex drivers didn't have to physically cross state lines to fit the definition of a transportation worker who is exempt from arbitration. The Ninth Circuit majority affirmed U.S. District Judge John C. Coughenour's April 2019 decision, which found that the drivers "delivered packaged goods that are shipped from around the country and which are delivered to consumers untransformed."

Both appellate courts zeroed in on the size and nature of Amazon's behemoth e-commerce and logistics business, and not just the specific activities of the Amazon Flex drivers at the heart of the dispute. Even purely local drivers handling deliveries in a single metropolitan area in just one state play a big enough role in the flow of interstate commerce to be exempt from arbitration, the courts said.

After Amazon's en banc rehearing petitions were rejected by both appellate courts, the company filed a certiorari petition with the Supreme Court on Nov. 4 challenging the Ninth Circuit ruling.

According to the company, Amazon Flex drivers do not drive out-of-state merchandise in the long-haul vehicles that brought them into the state. They use their own personal vehicles, and the goods are first sorted and distributed at the local delivery station or grocery store. This means that their activities are "sufficiently separate and not themselves interstate commerce, just as the ordinary meaning of 'interstate commerce' would lead one to conclude," Amazon has argued.

The case is Amazon.com Inc. et al. v. Bernadean Rittmann et al., case number 20-622, in the Supreme Court of the United States.

The appellate cases are Rittmann et al. v. Amazon.com Inc. et al., case number 19-35381, in the U.S. Court of Appeals for the Ninth Circuit, and Bernard Waithaka v. Amazon.com Inc. et al., case number 19-1848, in the U.S. Court of Appeals for the First Circuit.

Trucking Industry's Face-Off Over Calif.'s Rest Break Rules

California officials, labor unions and individual truck drivers are awaiting a Ninth Circuit decision on 2019 petitions seeking to invalidate the U.S. Department of Transportation's December 2018 determination that the Golden State's meal and rest break rules are preempted by federal law and cannot be enforced against interstate trucking companies.

A three-judge panel heard oral arguments in November. At issue is whether the DOT's Federal Motor Carrier Safety Administration overstepped when it invoked its authority as the federal safety regulator for the commercial motor vehicle industry to declare in 2018 that its rules governing truckers' hours supersede California's meal and rest break rules. For years before that, the FMCSA's position was that California's meal and rest break rules weren't preempted because they were generally applicable to workers across other industries.

Peeved by what it considered the federal agency's bid to undermine California's worker protections, the state attorney general's office, representing the California Labor Commissioner's Office, petitioned the Ninth Circuit to invalidate the FMCSA determination. The International Brotherhood of Teamsters and commercial truck drivers Duy Nam Ly and Phillip Morgan also filed petitions.

Marc S. Blubaugh, co-chair of Benesch Friedlander Coplan & Aronoff LLP's transportation and logistics practice group, said the case is significant given the volume of international commerce that passes through California — the ports of Los Angeles and Long Beach are the two biggest import gates into the U.S. — and the fact that other states often play copycat with California's regulatory schemes.

"What the transportation industry needs more than anything else is uniformity and predictability," he said. "Subjecting a motor carrier to a patchwork quilt of regulations that change from one state to another is like giving a series of one-two punches to a motor carrier. The carrier (and its workforce) can only handle so much and eventually decides to exit the industry, reducing capacity and clogging the entire supply chain."

Moreover, the implications of this particular case reach far beyond California. The FMCSA just issued a similar order in November, saying Washington state's meal and rest break rules cannot be enforced against interstate truck drivers.

While the petitioners might've made strong arguments that the FMCSA acted beyond its statutory authority, it'll be tough to unravel a federal agency finding, given the so-called Chevron deference that courts have long afforded government agencies in interpreting statutes and rules.

Moreover, the Ninth Circuit in recent years has rejected various trucking industry challenges to California's wage, meal and rest break rules by holding that generally applicable state laws are not preempted by the Federal Aviation Administration Authorization Act of 1994. For example, the Ninth Circuit has already carved a bright line limiting the scope of the FAAAA's preemption of any state law "relating to a price, route or service of any motor carrier" in 1998's Californians for Safe & Competitive Dump Truck Transportation v. Mendonca and 2014's Dilts v. Penske.

"The Ninth Circuit's interpretation of the FAAAA, such that it does not preempt general wage-and-hour laws that are put in place by a state, has resulted in states like California passing laws such as A.B. 5 that says no more independent contractors," Brad Hughes, a transportation litigation attorney at Clark Hill PLC, told Law360. "When you take the fifth-largest economy in the world, which is California, and you essentially remove the independent contractor model in the transportation industry from that economy, it's going to have a massive impact on the way in which the industry operates."

The consolidated cases are Labor Commissioner for the State of California v. Federal Motor Carrier Safety Administration, case numbers 19-70413, 18-73488, 19-70323 and 19-70329, in the U.S. Court of Appeals for the Ninth Circuit.

Green Groups' NEPA Project Review Rule Challenges

Transportation and infrastructure project developers are watching what happens with environmental groups' lawsuits challenging the Trump administration's proposal to update the National Environmental Policy Act to streamline project reviews. The various groups contend that the White House Council on Environmental Quality's July 15 final rule implementing changes to the bedrock environmental law were ill-considered and unlawful.

"While federal law includes provisions intended to speed up the environmental review process for transportation projects specifically, the CEQ rules, applicable to all federal agencies, go further," said Susan Lent, head of Akin Gump Strauss Hauer & Feld LLP's infrastructure and transportation practice.

Specifically, the CEQ rules narrow the types of actions subject to a detailed environmental review, direct agencies not to consider cumulative and indirect effects of projects, narrow the grounds to challenge environmental reviews, integrate NEPA and project permitting, and enable other actions to expedite project delivery, Lent said.

"The biggest question is whether Congress or the incoming Biden administration will act before a court in invalidating the CEQ rules," Lent said. "While a court must find the rules are arbitrary, capricious and not in compliance with NEPA, which is a relatively short, procedural statute, Congress and the Biden administration can invalidate the rules on policy grounds."

The Natural Resources Defense Council and a coalition of environmental groups **filed suit** in New York federal court in August, accusing the CEQ of imposing changes that **make it harder for agencies** to make informed decisions from project reviews — which is the entire point of NEPA. The groups allege that the CEQ rule "requires federal agencies across the executive branch to stick their heads in the sand rather than to take a 'hard look' at the full health and environmental consequences of their decisions."

Two other suits in Virginia and California federal courts were filed in late July by environmental groups that similarly accused the Trump administration of overhauling the NEPA without a proper explanation or full consideration of the potential consequences.

The CEQ's final rule significantly narrows the definition of what "effects" must be considered in conjunction with a project application by excluding the terms "direct," "indirect" and "cumulative," which the agency said has been confusing fodder for litigation. The rule defines "effect" as only affecting the "human environment," being "reasonably foreseeable" and having "a reasonably close causal relationship to the proposed action."

The cases are Environmental Justice Health Alliance et al. v. Council on Environmental Quality et al., case number 1:20-cv-06143, in the U.S. District Court for the Southern District of New York; Wild Virginia et al. v. Council on Environmental Quality et al., case number 3:20-cv-00045, in the U.S. District Court for the Western District of Virginia; and Alaska Community Action on Toxics et al. v. Council on Environmental Quality et al., case number 3:20-cv-05199, in the U.S. District Court for the Northern District of California.

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