

Families of 737 MAX crash victims set to face Boeing in US court

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Forensics experts shown in March 2019 combing through the crash site of an Ethiopian Airlines operated Boeing 737 MAX aircraft.

Relatives of passengers who died in the twin Boeing 737 MAX crashes are scheduled to confront the airplane maker Thursday in a US court,

some four years after the tragedies in Ethiopia and Indonesia.

The proceeding in Fort Worth, Texas, long sought by the families and resisted by the aerospace giant, is expected to include Boeing's entry of either a guilty or not guilty plea in a US criminal settlement over the calamities that claimed 346 lives.

The families have already chalked up some victories from US District Judge Reed O'Connor, who last week ordered a Boeing representative to appear at Thursday's arraignment after ruling in October that the Department of Justice's deferred prosecution agreement (DPA) with Boeing was negotiated in violation of the families' rights.

But those were stepping stones to the families' ultimate ambition: Undoing key elements of the DPA, which required Boeing to pay \$2.5 billion in fines and restitution in exchange for immunity from criminal prosecution for charges it defrauded the government during the certification of the MAX.

The company and its top executives deserve no such relief, argue attorneys for the families, who also plan to ask the court to establish an independent monitor because "the Justice Department cannot be trusted to monitor Boeing," they say in a brief.

More than two dozen relatives not able to attend filed statements on Wednesday with the court, including John Quindos Karanja, who lost his wife, daughter and three grandchildren in the Ethiopian Airlines crash.

"The Boeing company should be held accountable," Karanja wrote. "The US government and the FAA should help make the skies safe again for us and for generations to come."

Boeing has avoided commenting on the case outside of legal briefs, but

Chief Executive Dave Calhoun told CNBC on Wednesday that he felt "nothing but heartbreak" for the families and supported their right to a hearing.

"With respect to the legal proceeding itself, that's not a subject that I'm qualified to talk about," Calhoun said.

Victim's rights

The families have criticized the agreement ever since it was announced in January 2021, waging a battle not only against Boeing, but a second 800-pound gorilla: the Department of Justice.

In unveiling the agreement, DOJ said Boeing was being held accountable for "fraudulent and deceptive" conduct towards Federal Aviation Administration regulators during the MAX certification when the company omitted key facts about the Maneuvering Characteristics Augmentation System (MCAS), a flight handling system that badly malfunctioned in both crashes.

The DOJ's case spotlighted the deceptions of two Boeing technical pilots, but absolved leadership, concluding Boeing's misconduct was neither "pervasive" nor "facilitated by senior management," according to the DPA.



Relatives of Boeing 727 MAX crash victims are expected to confront the aircraft maker in court in a case involving a settlement over two calamities that claimed 346 lives.

But the families have rejected the validity of the agreement, arguing in legal briefs that Boeing's immunization from prosecution should be stripped because the DOJ flouted the US Crime Victims' Rights Act, which required the government to confer with them prior to entering into the agreement.

O'Connor, in an October 21 ruling, backed the families' argument about their status, ruling that they qualified as "crime victims" and concluding that Boeing's deceptions cost the relatives their loved ones.

Prosecutorial discretion

Adding to the families' momentum has been the Securities and Exchange Commission, which in September fined Boeing \$200 million for misleading investors about the MAX.

The SEC case homed in on a November 2018 press release approved by then-CEO Dennis Muilenburg after the first deadly crash on Indonesia's Lion Air.

The press release stated that the MAX was "as safe as any plane that has ever flown the skies," even though the company was urgently addressing the MCAS problem.

The agency also penalized Muilenburg \$1 million in a settlement that accused him of "materially misleading" statements.

O'Connor has not ruled on potential remedies.

Legal experts say courts typically show deference towards the DOJ on such agreements.

"The judge could cancel the DPA but I think that is unlikely," said Columbia University Professor John Coffee, who has criticized Justice's Boeing settlement as emblematic of the government's tendency to go easy on big, powerful companies.

"Prosecutors and the Executive Branch are given great discretion by law in that area," Coffee told AFP in an email, referring to the decision to prosecute.

Brandon Garrett, a professor at Duke University Law School, said courts should consider the public interest during reviews of DPAs, adding that

US law "permits such review."

But Garrett said courts have generally interpreted their role "very narrowly," while the DOJ has usually opposed such a review.

"If this judge does reject the agreement, I could imagine the DOJ would appeal, citing their prosecutorial discretion to defer prosecution," Garrett said.

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