The Burger Court Opinion
Writing Database

New Haven Inclusion Cases
399 U.S. 392 (1970)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzaman, George Washington University
Re: 914, 915, 916, 917, 920, 921, 1038, 1057
New Haven Inclusion Cases

Dear Potter:

Please join me in your opinion in the above.

Regards,

Mr. Justice Stewart

cc: The Conference
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SUPREME COURT OF THE UNITED STATES

New Haven Inclusion Cases.—OCTOBER TERM, 1969

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

On Appeals From the United States District Court for the Southern District of New York.

[June — 1970]

MR. JUSTICE BLACK, dissenting.

The central issue in these cases, easily lost I fear in the 101-page opinion of the Court, can in my judgment be briefly and simply stated. After this Court’s decision in the Penn-Central Merger Cases, 389 U. S. 486, the Interstate Commerce Commission assumed its difficult statutory task of determining the liquidation value of the assets of the New Haven Railroad, a determination which if upheld by the courts would decide the purchase price Penn Central would have to pay for the bankrupt New Haven. The Commission made that valuation determination, and the question before this Court is whether, under the appropriate standards of court review, the Commission’s valuation of the New Haven’s properties should have been sustained or rejected by the reviewing courts. This question comes here from two federal district courts, both of which were called upon to review the Commission’s valuation of the New Haven properties, (1) a bankruptcy court convened under § 77 of the Bankruptcy Act, 11 U. S. C. § 205, to consider the reorga-
Mr. Justice Black, J.

The central issue in these cases, easily lost I fear in the 101-page opinion of the Court, can in my judgment be briefly and simply stated. After this Court's decision in the Penn-Central Merger Cases, 389 U. S. 486, the Interstate Commerce Commission assumed its difficult statutory task of determining the liquidation value of the assets of the New Haven Railroad, a determination which if upheld by the courts would decide the purchase price Penn Central would have to pay for the bankrupt New Haven. The Commission made that valuation determination, and the question before this Court is whether, under the appropriate standards of court review, the Commission's valuation of the New Haven's properties should have been sustained or rejected by the reviewing courts. This question comes here from two federal district courts, both of which were called upon to review the Commission's valuation of the New Haven properties. (1) a bankruptcy court convened under § 77 of the Bankruptcy Act, 11 U. S. C. § 205, to consider the reorga-
MR. JUSTICE BLACK, with whom MR. JUSTICE HARLAN joins, dissenting.

The central issue in these cases, easily lost I fear in
the 98-page opinion of the Court, can in my judgment
be briefly and simply stated. After this Court's decision
in the Penn-Central Merger Cases, 389 U. S. 486, the
Interstate Commerce Commission assumed its difficult
statutory task of determining the liquidation value of the
assets of the New Haven Railroad, a determination which
if upheld by the courts would decide the purchase price
Penn Central would have to pay for the bankrupt New
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courts. This question comes here from two federal dis-

tRICT courts, both of which were called upon to review
the Commission's valuation of the New Haven proper-

[June 29, 1970]
May 25, 1979

Dear Potter:

RE: NEW HAVEN INCLUSION CASES.

On May 21, 1979 I sent you a return in the above cases.

On May 22, 1979 I learned that two lawyers working for me on the Inclusion matter are from a law firm which is involved in these cases.

Hence I am withdrawing my return to you, because I will not participate in the decision although the arguments, study, and deliberation all took place before I was aware of any conflict of interest.

I thought it best to note on your part circulation that I took no part in the decision of the cases.

Yours,

[Signature]

Mr. Justice Stewart

Mr. Justice Black

Mr. Justice Douglas

Mr. Justice Marshall
June 17th, 1865

Re: New Haven Insurrection Cases

Dear Sirs,

I find myself in entire agreement with the view that has been taken in this difficult case. There are times when the heart and soul are with you. There is nothing further to be done on the evidences, which I believe have been presented to the Court.

Yours truly,

[Signature]
June 23, 1970

Ref: New Haven Insulation Case

Dear Potter:

I am enclosing for your information a letter to the National Bureau of Standards regarding' the reports I have already discussed and submitted to your attention. It is my hope that this information will be of assistance to you.

Sincerely,

Yours,
RE: No. 914, etc. - New Haven Inclusion Cases

Dear Potter:

This is only formally to record my agreement with your splendid opinion in the above.

Sincerely,

W. J. B. Jr.

Mr. Justice Stewart

cc: The Conference
To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.
Circulated: MAY 20, 1970

New Haven Inclusion Cases.*—October Term, 1969

New Haven Inclusion Cases, Nos. 914, 916, 920, 1038, and 1057.
On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

New Haven Inclusion Cases, Nos. 915, 917, and 921.
On Appeals From the United States District Court for the Southern District of New York.

[May —, 1970]

Mr. Justice STEWART delivered the opinion of the Court.

These cases represent the latest stage of the litigation arising from the merger of the Pennsylvania and New York Central railroads into the Penn Central Transportation Company, which we upheld two Terms ago in the Penn-Central Merger Cases, 389 U. S. 486. A condition

May 28, 1970

MEMORANDUM TO THE CONFERENCE

Re: No. 914 et al., O. T. 1969
The New Haven Inclusion Cases

Due to the length of the proposed opinion and the work load in the Print Shop, I thought it better to circulate the enclosed pages, containing certain substantive revisions, than to recirculate the entire draft. These new pages 28-41 and 90-101 should be substituted for the old.

P.S.
In addition, the court afforded Penn Central the option of relieving itself of the 1978 underwriting obligation in the following manner:

"The Penn Central is granted an option, operative between the date of final consummation of the plan and February 1, 1978, to discharge its obligation to underwrite and pay the difference between such average market price and the higher 87 1/2 at the end of the ten year period by paying on one or more blocks of 50,000 shares to the New Haven . . . the difference between the mean market prices for sales of Penn Central common shares and 87 1/2 per share as of a specific day of sales on the Exchange which shall previously have been designated by Penn Central in a written notice delivered to the New Haven at least 5 days prior to such market date."  
*Id.*, at 810.

The central feature of the underwriting plan is an assurance to New Haven that if for nine years after inclusion the price of Penn Central stock does not reach $87.50 a share for at least a consecutive five-day period, there will be a compensatory payment by the issuer. The plan thus secures the New Haven bondholders against the risk of future loss while it leave them free to participate in future gains.

Penn Central and the Commission raise no objection to the reorganization court's underwriting plan. The bondholders have taken different positions on the matter. Chase Manhattan acknowledge that "[t]here has been no dispute in the proceedings as to the desirability of having the bulk of the consideration in the form of an appropriate number of shares of Penn Central stock," and urges that we uphold the plan with certain modifications. Manufacturers Hanover concedes that the
that any disposition of the debtor's properties must not be "inconsistent with the provisions and purposes of the Interstate Commerce Act," Bankruptcy Act, § 77 (f), 11 U. S. C. § 205 (f), and the requisite findings under the two statutes are equivalent. In re Chicago, R. I. & P. R. Co., 168 F. 2d 587, 594. This Court has stressed that § 77 incorporates the elements of § 5, St. Joe Paper Co. v. Atlantic Coast Line R. Co., 347 U. S. 298, 310. We have expressly ruled that where the Commission proposes a merger as part of a § 77 plan of reorganization, it must act "in accordance with all the requirements and restrictions applicable to mergers" under the Interstate Commerce Act. Id., at 309; cf. Ecker v. Western Pacific R. Corp., 318 U. S. 448, 481; New England Coal & Coke Co. v. Rutland R. Co., 143 F. 2d 179, 186. Here the Commission had demonstrated its awareness of the statutory interrelationship, specifically devising inclusion terms under § 5 to satisfy the requirements of § 77. Second Supplemental Report, 331 I. C. C., at 654.

Moreover, there was no reason to suppose that the reorganization court would be unable to adjudicate all the questions presented by the terms of the Commission's inclusion order. Although the three-judge court expressed concern that certain issues, such as protective conditions for New Haven during the interim period between merger and inclusion, might not lie within the jurisdiction of the reorganization court, the reorganization court nevertheless reached those issues without, so far as the record discloses, jurisdictional objections from any party.

The three-judge court thus confronted a situation where it was asked to consider the same pricing questions, will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable . . . ."
New Haven Inclusion Cases.*—October Term, 1969

New Haven Inclusion Cases, Nos. 914, 916, 920, 1038, and 1057.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

New Haven Inclusion Cases, Nos. 915, 917, and 921.

On Appeals From the United States District Court for the Southern District of New York.

[June —, 1970]

MR. JUSTICE STEWART delivered the opinion of the Court.

These cases represent the latest stage of the litigation arising from the merger of the Pennsylvania and New York Central railroads into the Penn Central Transportation Company, which we upheld two Terms ago in the Penn-Central Merger Cases, 389 U. S. 486. A condition

June 22, 1970

MEMORANDUM TO THE CONFERENCE

Re: Nos. 914, etc.
New Haven Inclusion Cases

I have asked the Clerk to secure a copy of the petition Penn-Central filed yesterday in the District Court for the Eastern District of Pennsylvania under §77 of the Bankruptcy Act. He tells me I can expect to receive a copy of the petition sometime this afternoon.

In view of yesterday's developments, I have taken the liberty of telling the print shop and the Clerk's office that the Court's opinion in these cases will not be announced Tuesday, June 23. I would strongly hope, however, that the opinion can be announced next Monday, June 29.

P.S.
MEMORANDUM TO THE CONFERENCE

Re: Nos. 914, etc.
New Haven Inclusion Cases

After considerable thought, I have concluded that the opinion for the Court in this case should be amended. I propose adding the enclosed footnote at the end of the first paragraph of the opinion, and substituting the enclosed text for the present text beginning with the last paragraph on page 90 and continuing through page 94.

I should appreciate your letting me have your views as soon as possible, so that, if these or similar changes are to be made, the printer will have time to make them.

P.S.
On June 21, 1970, the Penn Central Transportation Company filed a petition for reorganization under §77 of the Bankruptcy Act, 11 U.S.C. §205, in the United States District Court for the Eastern District of Pennsylvania. Whether the financial obligations dealt with in the present opinion may become subject to modification in those proceedings is a question with which the present opinion in no way deals.
June 24, 1970

MEMORANDUM TO THE CONFERENCE

Re: Nos. 914, etc.
New Haven Inclusion Cases

I enclose revisions in accordance with my suggested changes of yesterday. In order to ease the burden on the Print Shop, may I ask you to substitute the following in my Circulation No. 6:

Pages 1-4
41
87
90 to end.

P.S.
SUPREME COURT OF THE UNITED STATES

New Haven Inclusion Cases*—October Term, 1969

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

On Appeals From the United States District Court for the Southern District of New York.

[June —, 1970]

MR. JUSTICE STEWART delivered the opinion of the Court.

These cases represent the latest stage of the litigation arising from the merger of the Pennsylvania and New York Central railroads, which we upheld two Terms ago in the Penn-Central Merger Cases, 389 U.S. 486. A condition of that merger was Penn Central's promise to take

May 29, 1970

Re: Nos. 914, etc., - New Haven Inclusion Cases

Dear Potter:

Please join me in your opinion in these cases, with the modifications circulated May 29, 1970.

Sincerely,

[Signature]

Mr. Justice Stewart

cce: The Conference
June 23, 1970

Re: Nos. 914, etc., New Haven Inclusion Cases

Dear Potter:

I think your changes are wise ones and I accept them.

Sincerely,

B.R.W.

Mr. Justice Stewart

cc: The Conference