

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 Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

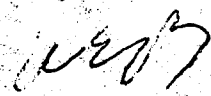
June 20, 1970

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

May 25, 1970

Re: New Haven Inclusion Cases

Dear Pether:

I will write a dissent to the above cases as soon
as I can.

Mrs. Justice Brennan

cc: The Commission

2/20/70 (10/11/1984)

1980/11/11 10:50 AM



Cite to notes
in PC rep. 12

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan ✓
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

1

SUPREME COURT OF THE UNITED STATES

From: Black, J.

New Haven Inclusion Cases.—OCTOBER TERM, 1969

Circulated: 6-16-70

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

On Writs of Certiorari to
the United States Court
of Appeals for the Sec-
ond 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 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-

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

2

SUPREME COURT OF THE UNITED STATES

New Haven Inclusion Cases.—OCTOBER TERM, 1969 ^{Circulated:} _____

Recirculated: 6-18-70

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

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

[June —, 1970]

MR. JUSTICE BLACK, with whom MR. JUSTICE HARLAN joins, 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-

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
~~Mr. Justice Brennan~~
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

From: Black, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

New Haven Inclusion Cases.—OCTOBER TERM, 1969

Recirculated: **JUN 25 1970**

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

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

[June 29, 1970]

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 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-

May 22, 1970

RE: NEW HAVEN INCLUSION CASES.

Dear Potter:

On May 21, 1970 I sent you a return in the above cases.

On May 22, 1970 I learned that two lawyers working for me on the impeachment matter are from a law firm which is involved in those 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 sent circulation that I took no part in the decision of the case.

W. B. P.

Mr. Justice Stewart

cc: The Chief Justice

Mr. Justice Black

Mr. Justice Harlan

Mr. Justice Brennan

Mr. Justice White

Mr. Justice Marshall

100-1047852

June 14, 1970

Re: New Haven Inclusion Cases

Dear Hugo:

I find myself in entire agreement with the viewpoint taken in your dissent in this difficult case, and would appreciate your joining me with you. I have a few minor suggestions about your opinion, which I am asking my Law Clerk to convey to your Law Clerk for your consideration.

Sincerely,

J. L. R.

June 23, 1970

Re: New Haven Incision Cases

Dear Potter:

Even though I am in absentia, I venture to express the view that the changes in your opinion already circulated, as reflected in your memorandum of today, would be detrimental to the work.

Sincerely,

J. H. R.

Very truly yours,

Chas. H. Johnson

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 26, 1970

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

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

4

SUPREME COURT OF THE UNITED STATES

New Haven Inclusion Cases.*—OCTOBER TERM, 1969

From: Stewart, J.

Circulated: MAY 20 1970

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

On Writs of Certiorari to
 the United States Court
 of Appeals for the Sec-
 ond 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 Transpor-
 tation Company, which we upheld two Terms ago in the
Penn-Central Merger Cases, 389 U. S. 486. A condition

*No. 915, *The New York, New Haven & Hartford Railroad Com-
 pany First Mortgage 4% Bondholders Committee v. United States
 et al.*; No. 917, *Manufacturers Hanover Trust Co. v. United States
 et al.*; No. 921, *Chase Manhattan Bank, N. A. v. United States
 et al.*, on appeal from the United States District Court for the
 Southern District of New York, argued March 30, 1970; No. 914,
*The New York, New Haven & Hartford Railroad Company First
 Mortgage 4% Bondholders Committee v. Smith et al.*; No. 916,
Manufacturers Hanover Trust Company v. United States et al.;
 No. 920, *Chase Manhattan Bank v. Penn Central Company et al.*;
 No. 1038, *Penn Central Company v. Manufacturers Hanover Trust
 Company et al.*; and No. 1057, *United States et al. v. The New
 York, New Haven and Hartford Railroad Company First Mortgage
 4% Bondholders Committee et al.*, on certiorari to the United States
 Court of Appeals for the Second Circuit in advance of judgment,
 argued March 30, 1970.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
J. JUSTICE POTTER STEWART

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.

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914, ETC.—OPINION

90 NEW HAVEN INCLUSION CASES

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 $87\frac{1}{2}$ 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 $87\frac{1}{2}$ 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

See
Memo
PS
Opinion
5/28

914, ETC.—OPINION

28 NEW HAVEN INCLUSION CASES

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"

PS
OAH
5/25
See
Mem.

STANDARD CHANGES THROUGHOUT.

pp. 16, 29, 31, 36, 50,
59, 60, 78, 79, 81, 82,
91, 92, 93, 95, 99, 101

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

SUPREME COURT OF THE UNITED STATES

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 Sec-
ond 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

*No. 915, *The New York, New Haven & Hartford Railroad Company First Mortgage 4% Bondholders Committee v. United States et al.*; No. 917, *Manufacturers Hanover Trust Company v. United States et al.*; No. 921, *Chase Manhattan Bank, N. A. v. United States et al.*, on appeal from the United States District Court for the Southern District of New York, argued March 30, 1970. No. 914, *The New York, New Haven & Hartford Railroad Company First Mortgage 4% Bondholders Committee v. Smith et al.*; No. 916, *Manufacturers Hanover Trust Company v. United States et al.*; No. 920, *Chase Manhattan Bank, N. A. v. Penn Central Company et al.*; No. 1038, *Penn Central Company v. Manufacturers Hanover Trust Company et al.*; and No. 1057, *United States et al. v. The New York, New Haven and Hartford Railroad Company First Mortgage 4% Bondholders Committee et al.*, on certiorari to the United States Court of Appeals for the Second Circuit in advance of judgment, argued March 30, 1970.

JUN 17 1970

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

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.
P.S.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 23, 1970

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.
P.S.

ment of present worth both a reasonable assurance of realization

of such worth and the opportunity of additional gain. In 1960

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION OF THE CONGRESS

Nos. 914, etc.
New Haven Inclusion Cases

Proposed footnote

**/ 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.

ment of present worth both a reasonable assurance

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

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.

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90-92, 41,87, 97,98

To: The United States
 Mr. Justice Black
 Mr. Justice Douglas
 Mr. Justice Harlan
 ✓ Mr. Justice Brennan
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

New Haven Inclusion Cases.*—OCTOBER TERM, 1969
 From: Stewart, J.

Circulated: JUN 24 1970

New Haven Inclusion Cases, } On Writs of Certiorari to
 Nos. 914, 916, 920, 1038, } the United States Court
 and 1057. } of Appeals for the Sec-
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New Haven Inclusion Cases, } On Appeals From the
 Nos. 915, 917, and 921. } United States District
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 } 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

omit

*No. 915, *The New York, New Haven & Hartford Railroad Company First Mortgage 4% Bondholders Committee v. United States et al.*; No. 917, *Manufacturers Hanover Trust Company v. United States et al.*; No. 921, *Chase Manhattan Bank, N. A. v. United States et al.*, on appeal from the United States District Court for the Southern District of New York, argued March 30, 1970. No. 914, *The New York, New Haven & Hartford Railroad Company First Mortgage 4% Bondholders Committee v. Smith et al.*; No. 916, *Manufacturers Hanover Trust Company v. United States et al.*; No. 920, *Chase Manhattan Bank, N. A. v. Penn Central Company et al.*; No. 1038, *Penn Central Company v. Manufacturers Hanover Trust Company et al.*; and No. 1057, *United States et al. v. The New York, New Haven and Hartford Railroad Company First Mortgage 4% Bondholders Committee et al.*, on certiorari to the United States Court of Appeals for the Second Circuit in advance of judgment, argued March 30, 1970.

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 28,
1970.

Sincerely,

Mr. Justice Stewart

cc: 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