

OSCAR GRUSS & SON *v.* UNITED STATES ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

No. 1060. Decided May 8, 1967.

Review by this Court of District Court's dismissal of appellant, New Haven railroad bondholder's, complaint challenging ICC's Penn-Central merger order *held* inappropriate pending outcome of ICC's further consideration of that order, see *Baltimore & Ohio R. Co. v. United States*, *ante*, p. 372, and New Haven railroad inclusion proceedings.

261 F. Supp. 386, vacated and remanded.

Myron S. Isaacs for appellant.

Solicitor General Marshall, *Assistant Attorney General Turner*, *Robert W. Ginnane* and *Jerome Nelson* for the United States et al., *Hugh B. Cox* and *Henry P. Sailer* for the Pennsylvania Railroad Co. et al., and *Joseph Auerbach* for Smith et al., appellees.

PER CURIAM.

Appellant is a bondholder of the New York, New Haven & Hartford Railroad Company (the New Haven), which is now undergoing a reorganization under § 77 of the Bankruptcy Act, 11 U. S. C. § 205. On April 6, 1966, the Interstate Commerce Commission directed inclusion of the New Haven in the merger of the New York Central Railroad Company and the Pennsylvania Railroad Company as soon as terms and conditions could be settled, but approved the Penn-Central merger and authorized its consummation prior to such inclusion. Appellant then petitioned the Commission to reconsider this order. The Commission allowed appellant to intervene but denied the petition to reconsider, and appellant then challenged the Commission's order of April 6 in the District Court,

which dismissed the complaint on the ground, among others, that appellant lacked standing to attack the Penn-Central merger. Since that time this Court has reviewed other aspects of the Commission's order approving the merger and has directed a remand to the Commission for further proceedings. *Baltimore & Ohio R. Co. v. United States, ante*, p. 372. Since the order which appellant's suit attacked is now subject to further consideration by the Commission and since proceedings to achieve inclusion of the New Haven are also under way before the Commission, it appears inappropriate to review the decision of the District Court at this time. Rather, we vacate the order of the District Court and remand the case to that court. Should appellant still be dissatisfied with the ultimate order of the Commission in the merger proceedings, it may attempt a fresh challenge in the District Court.

It is so ordered.