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### The Statute of Limitations in Antitrust Litigation II

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## THE STATUTE OF LIMITATIONS IN ANTITRUST LITIGATION II.

CARL H. FULDA\* and HOWARD C. KLEMME\*\*

While our article on this subject in the preceding issue of this Journal<sup>1</sup> was being printed, Congress suddenly bestirred itself to finally pass a uniform statute of limitations for anti-trust treble damage actions brought under section 4 of the Clayton Act.<sup>2</sup> The new law adds to the Clayton Act a new section 4A giving to the United States a cause of action for single damages and a new section 4B which reads as follows:

Any action to enforce any cause of action under sections 4 and 4A shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

The new law also amends the present tolling provisions in accordance with the proposal already discussed.<sup>3</sup> The limitation period is suspended during the pendency of a government suit and for one year thereafter, with the effect that a treble damage plaintiff must bring his action either within four years from the accrual of his cause of action or within one year after the government suit ceased to be pending. The report of the Senate Committee<sup>4</sup> explains this provision on grounds similar to those we had suggested.<sup>5</sup>

The new statute will take effect on January 7, 1956, six months after its enactment.

Under these circumstances, it may be appropriate to add to our previous discussion a brief supplement explaining the effect of this new legislation.

In the first place, the present law will remain unchanged in every respect until next January seventh. On that date, however, the uniform four-year period will supersede the various state statutes now limiting treble damage claims. The transition from widely differing periods to a uniform four-year period of limitation raises problems, because the presently applicable period of limitation is less than four years in many states, and longer than four years in many others, Ohio and New York being included among the latter group of states.<sup>6</sup>

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<sup>1</sup> Fulda and Klemme: *The Statute of Limitations in Antitrust Litigation*, 16 OHIO STATE L. J. 233-58 (1955).

<sup>2</sup> Public Law 137, 84th Cong. 1st Sess., Approved July 7, 1955.

<sup>3</sup> Fulda and Klemme, *op. cit.* Note 1, at pp. 257, 258.

<sup>4</sup> S. REP. No. 619, 84th Cong., 1st Sess. 6. (1955).

<sup>5</sup> *Supra*, note 1, at p. 258. The Committee observed that in some situations the new provision may actually be of benefit to plaintiffs.

<sup>6</sup> *Id.*, at pp. 243, 244, 246. The borrowing statutes of these states may, of course, require application of a different period, *id.* 245, 246.

The plain language of the new statute answers at least one of these transitional difficulties. Any cause of action presently subject to a limitation period of less than four years will be barred on January 7, 1956, if on that date the presently applicable statute has run, although less than four years may have elapsed since the accrual of that cause of action.<sup>7</sup>

But what will happen to causes of action now subject to a limitation period of more than four years? The statute itself gives no answer to this question. However, the House Report states:

... the bill provides that the effective date of the measure shall be 6 months after its enactment. This provision will give a half-year period of grace within which treble damage actions may be brought by persons whose causes of action have accrued for more than four years, and who wish to bring suit in those states having applicable statutes of limitations greater than the 4-year period provided for herein. Thus, where the State statute of limitations is longer than the new Federal Statute, 6 months is provided from the date of enactment of this measure for those whose rights may be cut off by the new limitation to bring their cases to court.<sup>8</sup>

Thus, a plaintiff whose cause of action accrued more than four years prior to January 7, 1956, and is now subject to a limitation period longer than four years which has not yet run, may bring his action at any time until the effective date of the new statute. If he fails to do so; he will be barred.<sup>9</sup>

Significantly, the new law does not change the present legal rules governing accrual of the cause of action<sup>10</sup> or the suspension of the period of limitation as a result of a government suit<sup>11</sup> except for the addition of the new provision noted above terminating suspension within one year after conclusion of the government suit.

Finally, the new statute does not mention private injunction suits under section 16 of the Clayton Act; nevertheless, it might be held applicable to such suits.<sup>12</sup>

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<sup>7</sup> See S. REP., *supra* note 4, at p. 5. H. R. REP. No. 422, 84th Cong. 1st Sess., 7 (1955).

<sup>8</sup> House Report, *supra* note 7, p. 2.

<sup>9</sup> The constitutionality of this arrangement is not open to question. See ROTTSCHAEFER, *AMERICAN CONSTITUTIONAL LAW* (1939), pp. 549, 550.

<sup>10</sup> *Op. cit. supra* note 1, at pp. 247-251.

<sup>11</sup> *id.*, pp. 251-55.

<sup>12</sup> *id.*, pp. 246, 247.



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