Brief SEC Brief
DC

NO. 91-8938

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RUSSELL HENDERSON, et al.,

Plaintiffs-Appellants,

v.

SCIENTIFIC-ATLANTA, INC.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF FOR THE UNITED STATES AS INTERVENOR AND THE SECURITIES AND EXCHANGE COMMISSION AS AMICUS CURIAE

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Docket No. 91-8938
Russell Henderson v. Scientific-Atlanta, Inc.

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The trial judge and all attorneys, persons, associations of persons, firms, partnerships, and corporations that have an interest in the outcome of this case are listed below:

Adar DISC, Inc.

Advanced Communications Engineering, Inc.

Biddle, Barbara C.

Bunch, Gary P.

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Pope, C. Neal

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Presto, Charles A.

Quinn, Randall W.

SA Investment Company

SA Japan, K.K.

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Scientific Sales Engineering Company

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Scientific-Atlanta Chile y Compania Limitada

Scientific-Atlanta Europe, Inc.

Scientific-Atlanta Export Corporation

Scientific-Atlanta International, Inc.

Scientific-Atlanta Japan, Inc.

Scientific-Atlanta Mediterranean, Inc.

Scientific-Atlanta Pan American, Inc.

Docket No. 91-8938
Russell Henderson v. Scientific-Atlanta, Inc.

Scientific-Atlanta Pty. Ltd.

Scientific-Atlanta S.p.A.

Scientific-Atlanta Trade 1, Inc.

Scientific-Atlanta Trade 2, Inc.

Scientific-Atlanta Trade 3, Inc.

Scientific-Atlanta Trade 4, Inc.

Scientific-Atlanta Trade 5, Inc.

Scientific-Atlanta W.G., Inc.

Scientific-Atlanta, Inc.

Scientific-Atlanta, Ltd.

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Smith, Leslie E.

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Swann, Jerre B.

Systems Communication Cable, Incorporated

Tomlinson, Wade H.

Vining, The Honorable Robert L., Jr.

Walker, Mary Lillian

Whitley, Joe D.

STATEMENT REGARDING ORAL ARGUMENT

This appeal presents a challenge to the constitutionality of Section 27A of the Securities Exchange Act of 1934. The United States and the Securities and Exchange Commission believe that oral argument would assist the Court in considering the constitutional issues raised in this appeal. As an intervenor, the United States wishes to participate in oral argument to defend the constitutionality of Section 27A.

TABLE OF CONTENTS

TABLE OF CITATIONS

Statutes, Regulations, and Rules

Legislative History

Other Materials

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BRIEF FOR THE UNITED STATES AS INTERVENOR AND THE SECURITIES AND EXCHANGE COMMISSION AS AMICUS CURIAE

PRELIMINARY STATEMENT

Section 27A of the Securities Exchange Act of 1934 establishes the limitations period for private civil actions under Section 10(b) of the Act that were filed prior to the Supreme Court's decision in Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 111 S. Ct. 2773 (1991). Section 27A provides that the limitations period for such suits "shall be the limitation period provided by the laws applicable in the jurisdiction * * * as such laws existed on June 19, 1991," the day before Lampf was decided. The purpose

of Section 27A is to protect victims of securities fraud from the retroactive effect of Lampf by preserving suits filed prior to Lampf that were timely when filed.

The defendant in this case, Scientific-Atlanta, raises separation-of-powers, due process, and equal protection challenges to the constitutionality of Section 27A. It is well established, however, that Congress can enact a law that extends the statute of limitations for pending cases. Scientific-Atlanta cites no decision, and we are aware of none, that invalidates such a federal statute on any constitutional basis. Congress clearly had the authority to enact a statute that protects the reliance interests of securities plaintiffs from the retroactive impact of the Supreme Court's decision in Lampf. Accordingly, as we show below, Scientific-Atlanta's challenges to Section 27A are without merit.

STATEMENT OF JURISDICTION

1. The jurisdiction of the district court over the subject matter of this case is asserted under 15 U.S.C. § 78aa, 28 U.S.C. §§ 1331, 1332, 1337, and principles of pendent jurisdiction.

2. This is an appeal from a final decision of the district court. The appeal is within this Court's appellate jurisdiction under 28 U.S.C. § 1291. The notice of appeal was filed within the time allowed by Rule 4 of the Federal Rules of Appellate Procedure.

STATEMENT OF ISSUES

Whether Section 27A of the Securities Exchange Act of 1934 is constitutional.[1]

STATEMENT OF THE CASE

Course of Proceedings and Disposition Below

This is a private securities suit brought against Scientific-Atlanta in the Northern District of Georgia under Section 10(b) of the Securities Exchange Act and the common law of Georgia. Scientific-Atlanta defended itself on the ground, inter alia, that the plaintiffs' federal securities claims are untimely. On September 31, 1991, following the Supreme Court's decision in Lampf, the District court dismissed the federal claims as time-barred and exercised its discretion under the pendent-jurisdiction doctrine to dismiss the common law claims. This appeal followed.

Statement of Facts

1. Statutory Background

This case presents claims arising under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5. Neither Section 10(b) nor Rule 10b-5 contains a limitations period. At the time this suit was filed in September 1988, this Court's practice was to borrow the applicable limitations period for private Section 10(b) actions from state law. See, e.g., Smith v. Duff & Phelps, Inc., 891 F.2d 1567, 1569-

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[1]The United States and the Securities and Exchange Commission take no position regarding the other issues in this appeal.

70 (11th Cir. 1990); Durham v. Business Management Associates, 847 F.2d 1505 (11th Cir. 1988).

On June 20, 1991 -- almost three years after this action was brought -- the Supreme Court held in Lampf that private Section 10(b) actions are subject to a uniform federal limitations period. Lampf adopted a "1-and-3" limitations period, under which a suit may not be brought more than 1 year after the fraud is discovered or 3 years after the fraud occurs. The 1-and-3 limitations period is shorter than many of the borrowed state limitations periods previously applied by this Court and other Courts of Appeals.

Lampf applied its 1-and-3 limitations period to the plaintiffs before it and dismissed their suit. On the same day, in James B. Beam Distilling Co. v. Georgia, 111 S. Ct. 2439 (1991), the Supreme Court disallowed the use of "selective prospectivity" in civil litigation -- the practice of applying a new rule of law in the case in which it is announced but not applying it to other pending suits. Beam holds that where a court in a civil case applies a new rule of law to the parties before it, the rule must be applied retroactively to all other pending cases. The lower courts have interpreted Beam to require that Lampf's 1-and-3 rule be applied retroactively. See, e.g., Welch v. Cadre Capital, 946 F.2d 185 (2d Cir. 1991).

Shortly after the Supreme Court issued its decisions in Lampf and Beam, Congress took up legislative proposals to extend the limitations period for private Section 10(b) actions beyond the 1-and-3 period adopted by Lampf. Members of Congress were unable

to agree on a general limitations period to replace the 1-and-3 period. However, Congress "address[ed] the most immediate problem" created by Lampf, its retroactive impact on "cases that were pending at the time that the decision came down," by adding Section 27A to the Securities Exchange Act in December 1991. 137 Cong. Rec. S18624 (daily ed. Nov. 27, 1991) (Sen. Bryan).

Section 27A provides in relevant part that "[t]he limitation period for any private civil action implied under section 10(b) of this Act that was commenced on or before June 19, 1991, shall be the limitation period provided by the laws applicable in the jurisdiction, including principles of retroactivity, as such laws existed on June 19, 1991." Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, § 476, 105 Stat. 2387 (adding Section 27A to Securities Exchange Act). The purpose of Section 27A is "to return plaintiffs and defendants to exactly the position that they had on June 19, 1991," by restoring pre-Lampf limitations periods for plaintiffs who filed suit before Lampf was decided. 137 Cong. Rec. S17382 (daily ed. Nov. 21, 1991) (Sen. Riegle). In jurisdictions that had borrowed state limitations periods prior to Lampf, "the borrowing approach would continue to apply" by virtue of Section 27A. Id. at S18624 (daily ed. Nov. 27, 1991) (Sen. Bryan). And in jurisdictions that already had adopted a uniform federal limitations period before Lampf, but had declined to apply that period retroactively, "the courts would continue to be obliged to decline to apply the new rule." Id.

2. The Present Litigation

From the outset of the present litigation, Scientific-Atlanta has defended itself on the ground that the plaintiffs' claims under Section 10(b) are untimely. The district court first addressed Scientific-Atlanta's limitations defense in September 1989, nearly two years before the Supreme Court's decision in Lampf. Borrowing a limitations period from Georgia law, the district court denied Scientific-Atlanta's motion for summary judgment.

Following the Supreme Court's decision in Lampf, Scientific-Atlanta renewed its limitations defense. On September 30, 1991, several months after Lampf was decided and several months before Section 27A was enacted, the district court applied Lampf retroactively to dismiss the plaintiffs' Section 10(b) claims as time-barred. The district court declined to exercise pendent jurisdiction over the plaintiffs' state law claims once the Section 10(b) claims were dismissed, and this appeal followed.

Section 27A became law during the pendency of the present appeal, and the plaintiffs promptly requested this Court to apply the new statute. In response, Scientific-Atlanta invited the Court to hold that Section 27A is unconstitutional. At the same time, Scientific-Atlanta notified the clerk of the Court that the constitutionality of a federal statute was being called into question in a case where the United States is not a party. By letter dated January 17, 1992, this Court certified to the Attorney General that the constitutionality of Section 27A has been drawn into question. This brief is filed pursuant to 28 U.S.C. § 2403(a) in response to

the Court's certification. The Securities and Exchange Commission joins this brief as amicus curiae.

STANDARD OF REVIEW

The constitutionality of Section 27A was not addressed by the district court and is subject to plenary consideration by this Court.

SUMMARY OF ARGUMENT

Scientific-Atlanta contends that Section 27A infringes on separation-of-powers principles and deprives defendants of due process and equal protection. These contentions are wholly without merit. Section 27A is a manifestly constitutional means of preventing the harm that would have occurred if the restrictive limitations period announced in Lampf were applied retroactively to plaintiffs who filed suit before Lampf in reliance on then-governing limitations periods.

1. Scientific-Atlanta's separation-of-powers arguments rest on mischaracterizations about what Section 27A does. Section 27A does not require the courts to decide particular cases in a particular way, as Scientific-Atlanta suggests. Instead, it merely limits a procedural defense without attempting to prescribe the outcome of the litigation, a course of action whose constitutionality is settled by United States v. Sioux Nation of Indians, 448 U.S. 371, 405-407 (1980). Likewise, Section 27A does not force the courts to decide cases without regard to governing rules of law, as Scientific-Atlanta claims. Instead, Section 27A simply prescribes a new rule of law, something that lies at the heart of Congress's

powers under Article I. Finally, Section 27A's "principles of retroactivity" clause does not apply to this case, as Scientific-Atlanta asserts -- and even if it did, it does not conflict with any limitation on the powers of Congress under Article I.

2. Scientific-Atlanta's due process and equal protection challenges are equally misconceived. The Supreme Court repeatedly has upheld the constitutionality of statutes like Section 27A that extend limitations periods for pending cases. Section 27A serves the legitimate goal of protecting securities plaintiffs who filed suit prior to Lampf in reliance on pre-Lampf limitations periods. The distinctions drawn under Section 27A between different jurisdictions and different classes of plaintiffs are rationally -- indeed, directly -- related to this legitimate legislative goal. Neither due process nor equal protection demands more.

ARGUMENT

SECTION 27A OF THE SECURITIES EXCHANGE ACT DOES NOT VIOLATE THE CONSTITUTION

Introduction

By retroactively adopting a restrictive limitations period for private Section 10(b) actions, the Supreme Court's decision in Lampf placed countless plaintiffs in jeopardy of forfeiting legitimate securities claims through no fault of their own. Section 27A was enacted to protect these plaintiffs by reinstating the limitations periods applicable at the time Lampf was decided. Section 27A vindicates the legitimate reliance interests of these plaintiffs, and it does so in the only way possible, by restoring the status quo ante.

According to Scientific-Atlanta, the Constitution condemns these plaintiffs to the loss of their claims by prohibiting Congress from reinstating pre-Lampf limitations periods. Scientific-Atlanta argues (at pp. 16-23) that Congress has breached the Constitution's separation of powers by enacting Section 27A. Scientific-Atlanta further argues (at pp. 23-29) that Section 27A violates the due process and equal protection requirements of the Fifth Amendment.

The constitutional challenges being advanced here by Scientific-Atlanta have been rejected in all decisions to date addressing the constitutionality of Section 27A. See Bankard v. First Carolina Communications, Inc., 1992 WL 3694 (N.D. Ill. Jan. 6, 1992); In re American Continental Corporation/Lincoln Savings & Loan Securities Litigation, MDL No. 834 (D. Ariz. Feb. 7, 1992); Ayers v. Sutcliffe, No. C-1-90-650 (S.D. Oh. Feb. 11, 1992); Venturtech II v. Deloitte Haskins & Sells, No. 88-1012-CIV-5-H (E.D.N.C. Feb. 24, 1992); TBG Inc. v. Bendis, No. 89-2423-O (D. Kan. March 5, 1992). For the reasons that follow, this Court should do the same. Far from being unconstitutional, Section 27A is an entirely legitimate response to the harm threatened by the retroactive application of Lampf, and Scientific-Atlanta's constitutional objections are wholly insubstantial.

A. Section 27A Does Not Violate Separation-of-Powers Principles

1. Scientific-Atlanta advances two distinct separation-of-powers arguments against Section 27A. First, relying on United States v. Klein, 80 U.S. (13 Wall.) 128 (1871), Scientific-Atlanta

argues (at pp. 16-20) that separation-of-powers principles are violated "if Congress attempts 'to prescribe a rule for the decision of a cause in a particular way'" (p. 17) (quoting Klein, 80 U.S. at 146). The precise breadth of Klein's holding has long been a matter of judicial and academic debate.[2] But however broadly Klein may be read, the Supreme Court itself has made clear that Klein does not affect the validity of statutes which, like Section 27A, merely withdraw a procedural defense without attempting to dictate the outcome of a case.

The inapplicability of Klein to Section 27A is established by United States v. Sioux Nation of Indians, 448 U.S. 371 (1980). In Sioux Nation, the Supreme Court upheld the constitutionality of a statute that withdrew a res judicata defense in an Indian treaty controversy. In so doing, the Court expressly rejected an argument that the statute was unconstitutional under Klein. The Court distinguished Klein in the following terms (448 U.S. at 405, 407):

> [T]he [statutory] proviso at issue in Klein had attempted "to prescribe a rule for the decision of a cause in a particular way." 13 Wall., at 146. The amendment at issue in the present case * * * waived the defense of res judicata so that a legal claim could be resolved on the merits. Congress made no effort * * * to control the Court of Claims' ultimate decision of that claim. * * * [Because] Congress in no way attempted to prescribe the outcome [of the litigation], * * * this amendment is distinguishable from the proviso to this Court's appellate jurisdiction held unconstitutional in Klein. [Emphasis added.]

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[2]See generally Young, Congressional Regulation of Federal Courts' Jurisdiction and Processes: United States v. Klein Revisited, 1981 Wisc. L. Rev. 1189.

This case is distinguishable from Klein for precisely the same reason. Here, just as in Sioux Nation, Congress has "in no way attempted to prescribe the outcome" of litigation. Section 27A does not tell the courts how to decide the merits of this case or any other pending case brought under Section 10(b); it simply establishes the applicable limitations period. The outcome of any particular case to which Section 27A applies may depend on a court's determination of any number of issues other than the statute of limitations. And even as to the limitations issue, a court will apply the relevant limitations period to the circumstances of the case; the court, not Congress, will determine whether a particular claim is untimely under Section 27A.[3]

Scientific-Atlanta suggests (at p. 20) that Section 27A violates separation-of-powers principles under Klein because it does not change the underlying law, but instead directs courts to reach a result that is different than what the law "otherwise requires." The premise of this argument is simply incorrect. See, e.g., Bankard, 1992 WL 3694 at *6. Although Congress did not enact a general limitations period for all Section 10(b) private actions, it did change the law governing the limitations period for cases filed prior to Lampf, by replacing Lampf's 1-and-3 rule with the limitations periods previously applicable in each jurisdiction.

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[3]In this respect, the constitutionality of Section 27A is even more clear than that of the statute upheld in Sioux Nation. While that statute abolished the res judicata defense altogether, Section 27A does not abolish the statute-of-limitations defense; it merely affects the breadth of the defense by altering the limitations period.

Section 27A thus does not purport to require courts to decide cases without regard to the governing law. Instead, it changes the governing law itself.[4]

2. Scientific-Atlanta's second separation-of-powers argument concerns the clause of Section 27A directing courts to use pre-Lampf "principles of retroactivity" in determining the limitations periods for suits filed prior to Lampf (see p. 5 supra). Scientific-Atlanta argues that this clause is meant to supersede the rule against "selective prospectivity" announced in Beam (see p. 4 supra) and that Congress lacks the power to do so because Beam rejects selective prospectivity on constitutional grounds.

The short answer to this argument is that Section 27A's "principles of retroactivity" clause does not apply to this suit or any other suit brought in this Circuit. The retroactivity clause is not directed at Circuits like this one which had borrowed state limitations periods prior to Lampf (see pp. 3-4 supra), but rather at Circuits that had anticipated Lampf by adopting a uniform

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[4]For this reason, Scientific-Atlanta is not assisted by Seattle Audubon Society v. Robertson, 914 F.2d 1311 (9th Cir. 1990), cert. granted, 111 S. Ct. 2886 (1991) (No. 90-1596). In Robertson, the Ninth Circuit relied on Klein to invalidate a federal statute that the Court of Appeals construed to "direct[] the [district] court to reach a specific result and make certain factual findings under existing law in connection with two cases pending in federal court." 914 F.2d at 1316. The United States is urging the Supreme Court to reverse the Ninth Circuit's decision in Robertson, but even if the decision were correct, it would not be applicable here because Section 27A does not direct the outcome of any pending case or mandate factual findings.

federal limitations period.[5] As explained by one of Section 27A's leading supporters:

> A number of courts had switched from a "borrowing" approach to a federalized and shortened statute of limitations, but had declined to apply the uniform federalized approach retroactively because of the obvious unfairness of doing so. In those circuits that had declined to apply the shortened [federal] statute retroactively, the courts would continue to be obliged to decline to apply the new rule [recognized in Lampf]. That is the meaning of the phrase[,] "including principles of retroactivity."

137 Cong. Rec. 18624 (daily ed. Nov. 27, 1991) (Sen. Bryan) (emphasis added). Because this Court is not one of those that "had switched from a 'borrowing' approach to a federalized and shortened statute of limitations" (id.), the "principles of retroactivity" clause of Section 27A does not apply to this case, and Scientific-Atlanta's complaints about it therefore do not require further consideration.

Even if the retroactivity clause were applicable, Scientific-Atlanta's objections are without merit, for two reasons. First, contrary to Scientific-Atlanta's claim, Beam is not a constitutional decision. Of the nine Justices who took part in Beam, only three relied on constitutional grounds. See 111 S. Ct. at 2449-51 (Blackmun, Marshall & Scalia, JJ., concurring in judgment). Three other Justices rested on non-constitutional grounds, while the dissenting Justices rejected both grounds. See id. at 2441-48

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[5]See In re Data Access Systems Securities Litigation, 843 F.2d 1537 (3d Cir.) (en banc), cert. denied, 488 U.S. 849 (1988); Ceres Partners v. GEL Associates, 918 F.2d 349 (2d Cir. 1990); Short v. Belleville Shoe Mfg. Co., 908 F.2d 1385 (7th Cir. 1990), cert. denied, 111 S. Ct. 2887 (1991).

(Stevens & Souter, JJ.); id. at 2448-49 (White, J., concurring in judgment); id. at 2451-56 (Rehnquist, C.J., and O'Connor & Kennedy, JJ., dissenting). Thus, a majority of the Court declined to hold that a rule against selective prospectivity is constitutionally required.

Second, and just as important, even those Justices in Beam who rejected selective prospectivity on constitutional grounds did so out of concern about the limits of judicial power under Article III, not limits on legislative power under Article I. Justice Scalia reasoned that courts lack the authority to engage in selective prospectivity because the judicial power under Article III "is the power 'to say what the law is,' not the power to change it." 111 S. Ct. at 2451 (Scalia, J., concurring in judgment). Similarly, Justice Blackmun reasoned that "prospectivity * * * breaches our obligation to discharge our constitutional function" under Article III. Id. at 2450 (Blackmun, J., concurring in judgment). These opinions rest on the belief that the judicial power under Article III does not include the power to exempt litigants from the effect of recognized rules of law. In contrast, the issue here is the power of Congress to change the law under Article I, not the power of the courts to disregard the law under Article III. Thus, even if Beam were a constitutional decision -- and as shown above, it is not -- it would not affect the validity of Congress's action in enacting Section 27A.

B. Section 27A Does Not Violate Scientific-Atlanta's Due Process or Equal Protection Rights

1. In challenging the constitutionality of Section 27A under the Due Process Clause, Scientific-Atlanta faces a formidable body of contrary precedent. The Supreme Court has repeatedly rejected due process challenges to laws that extend statutory limitations periods, even when such extensions are applied retroactively to pending cases that otherwise would be time-barred.

The leading decision in this area is Chase Securities Corp. v. Donaldson, 325 U.S. 304 (1945). In Chase, the Court rejected a due process challenge to a Minnesota statute that extended the limitations period for pending actions asserting claims under the state's securities laws. The Court held that the statute constitutionally could be applied to revive a pending claim which otherwise would have been time-barred. Reaffirming an earlier decision, the Court held that "where lapse of time has not invested a party with title to real or personal property, a state legislature, consistently with the Fourteenth Amendment, may repeal or extend a statute of limitations, even after the right of action is barred thereby, restore to the plaintiff his remedy, and divest the defendant of the statutory bar." 325 U.S. at 311-312 (citing Campbell v. Holt, 115 U.S. 620 (1885)).

The validity of Chase has been reaffirmed by the Supreme Court in International Union of Electrical, Radio & Machine Workers v. Robbins & Myers, Inc., 429 U.S. 229 (1976), which relied on Chase to reject a due process challenge to the retroactive extension of a federal statute of limitations. See 429 U.S. at 243-44. Chase

thus continues to be dispositive in sustaining the constitutionality of the retroactive application of statutes of limitations. See, e.g., Bernstein v. Sullivan, 914 F.2d 1395 (10th Cir. 1990); Wesley Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C. Cir. 1989), cert. denied, 494 U.S. 1003 (1990); Starks v. S.E. Rykoff & Company, 673 F.2d 1106, 1109 (9th Cir. 1982).

Scientific-Atlanta argues that Section 27A violates the Due Process Clause, notwithstanding these precedents, because it does not have a rational basis. Scientific-Atlanta contends (at pp. 26-29) that Section 27A is arbitrary and irrational because Congress reinstated pre-Lampf limitations periods without making a broader legislative decision to extend the limitations period for all cases, including ones brought after Lampf. Scientific-Atlanta assumes that the only legitimate motive for Congressional intervention would be to replace Lampf's 1-and-3 rule with a longer limitations period and that Section 27A is an irrational means of pursuing that end.

This analysis overlooks a more modest but plainly legitimate Congressional goal -- that of protecting plaintiffs who filed suit prior to Lampf in reliance on the then-existing limitations periods in their jurisdictions. In Congress's view, "Lampf changed the rules in the middle of the game for thousands of fraud victims who already had suits pending." 137 Cong. Rec. 18624 (daily ed. Nov. 27, 1991) (Sen. Bryan). Congress understandably regarded this as "the most immediate problem" created by Lampf. Id.; see also id. at S17315 (daily ed. Nov. 21, 1991) (Sen. Riegle) ("Since the Lampf

case will result in the dismissal of cases that were timely prior to that decision, we simply cannot drop the Bryan amendment and return to it next session[;] [w]e must take steps to protect those investors who had cases pending prior to that decision."). It strongly advances the investor protection purposes of the Securities Exchange Act for Congress to provide that lawsuits that were timely when filed will not be dismissed based on the retroactive application of a subsequent judicial decision. Section 27A is an eminently rational means of dealing with the retroactive problems created by Lampf, and it thus fully satisfies the rational-basis requirement of the Due Process Clause. Cf. General Motors Corp. v. Romein, No. 90-1390 (U.S. March 9, 1992), slip op. at 9-10.

2. Scientific-Atlanta's equal protection challenge faces equally daunting obstacles. Absent a classification that is invidious or impinges on fundamental rights, a statute does not deny equal protection as long as it is rationally related to the achievement of legitimate government purposes. See, e.g., G.D. Searle & Co. v. Cohn, 455 U.S. 404, 408 (1982). Laws effecting retroactive changes in statutes of limitations implicate no fundamental rights, see, e.g., Chase, 325 U.S. at 314, and Section 27A employs no suspect classes such as race or gender. Thus, Section 27A need only satisfy a rational relationship test to meet the requirements of equal protection.

Scientific-Atlanta makes two distinct equal protection challenges to Section 27A. Its first argument (at pp. 23-25) is that Section 27A draws irrational geographic distinctions by mandating

different limitations periods in different jurisdictions. Scientific-Atlanta argues that "federal policy" demands a uniform limitations period for all Section 10(b) suits and that Section 27A's failure to adhere to geographic uniformity is unconstitutionally irrational.

Unfortunately for Scientific-Atlanta, the geographic distinctions drawn by Section 27A are a perfectly rational and legitimate way of protecting the reliance interests of pre-Lampf plaintiffs, who were subject to different limitations periods in different jurisdictions prior to Lampf. Indeed, Section 27A is the only way to protect those varying reliance interests. It is also worth noting that the outcome to which Scientific-Atlanta objects -- state-by-state variations in limitations periods for a federal cause of action -- is an outcome that the Supreme Court itself has created whenever it has directed lower courts to look to state law to borrow limitations periods for federal claims. See, e.g., Del Costello v. International Brotherhood of Teamsters, 462 U.S. 151, 158-60 (1983) (citing cases). Scientific-Atlanta's argument would render unconstitutional not only Section 27A, but this entire line of Supreme Court precedents as well.[6]

Scientific-Atlanta's second equal protection argument (at pp. 28-29) is that Congress acted irrationally in extending limitations

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[6]It will not do for Scientific-Atlanta to claim that this case is different because "federal policy" demands uniformity for Section 10(b) suits. It is for Congress, not Scientific-Atlanta, to decide "federal policy," and Congress rationally has decided that the most important federal policy following Lampf is to protect plaintiffs whose suits were timely when filed.

periods for plaintiffs who filed suit prior to June 20, 1991, but not doing the same for plaintiffs who filed suit after that date. This argument is little more than Scientific-Atlanta's due process argument (see pp. 14-15 supra) done up in equal protection garb, and it gains nothing from being repeated under a different constitutional heading. It is black-letter law that Congress need not legislate a comprehensive solution to every problem, but instead is free to deal with the most pressing aspect of the problem first. See, e.g., Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 466 (1981). Here, Congress fairly regarded the status of pre-Lampf suits as its most pressing concern, since failure to restore pre-Lampf limitations periods for these suits could irreparably injure plaintiffs who had legitimately relied on pre-Lampf law.

To be sure, even persons who did not file suit prior to Lampf may have relied on pre-Lampf limitations periods, and Section 27A does not assist those persons. But Congress had a rational basis for focusing its concern on those who had already filed suit when Lampf was decided. Among other things, those who had filed suit had incurred potentially significant litigation expenses, which would be effectively forfeited along with their causes of action if Lampf were applied to their cases. Many of these litigants filed suit a number of years ago, at a time when the result in Lampf could not possibly have been anticipated or foreseen. There is nothing irrational, and certainly nothing unconstitutional, about Congress's decision to treat these individuals as having the most

compelling claims to legislative assistance.[7] Congress has simply left the balance of the problem created by Lampf for more comprehensive legislative redress in the future, and that decision is a perfectly constitutional one. See, e.g., Schweiker v. Wilson, 450 U.S. 221, 234 (1981) ("If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequity.'").[8]

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[7]Even if Scientific-Atlanta's equal protection argument were correct in this regard, it is far from clear that Scientific-Atlanta would benefit. If Section 27A discriminated impermissibly against persons who did not file suit prior to Lampf, the most obvious remedy would be to extend the benefits of the statute to those persons -- a remedy that would not assist Scientific-Atlanta in this case.

[8]In the course of its equal protection argument, Scientific-Atlanta suggests in passing (at p. 27) that Congress improperly attempted to "get" individuals like Michael Milken and Charles Keating when it enacted Section 27A. Although individuals were mentioned during the Congressional debate on Section 27A (see 137 Cong. Rec. S17356 (daily ed. Nov. 21, 1991) (Sen. Domenici)), the statute applies to all pending lawsuits and does not single out any individuals. Like the statute upheld in Chase, it is "a general [law], applying to all similarly situated persons or transactions. * * * That the motivation for the Act may have arisen in a few cases or in a single case would not establish that a general Act such as we have described would deny equal protection." 304 U.S. at 309 n.5.

CONCLUSION

For the foregoing reasons, Section 27A of the Securities Exchange Act is constitutional.

Respectfully submitted,

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March 1992

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 1992, I served the foregoing BRIEF FOR THE UNITED STATES AS INTERVENOR AND THE SECURITIES AND EXCHANGE COMMISSION AS AMICUS CURIAE on the other parties to this appeal by causing copies to be mailed, first-class postage prepaid, to:

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