

June 12, 2018

U.S. Supreme Court Holds that Timely Class Action Complaint Does Not Toll Time for Subsequent, Untimely Class Actions

On June 11, 2018, the U.S. Supreme Court handed a victory to class action defendants in *China Agritech, Inc. v. Resh*, overturning a Ninth Circuit rule that allowed the filing of successive class action complaints, even after the limitations period expired. The Court held that the rule in *American Pipe v. Construction Co.*, under which the timely filing of a putative class action tolls the time for filing individual claims (if class certification is later denied), does not apply to successive class actions. Justice Ginsburg's majority opinion, joined by seven justices, suggests the same rule applies to all manner of class action litigation. Only Justice Sotomayor, writing alone in concurrence, believed that the holding should be limited to suits, like *China Agritech*, brought under the Private Securities Litigation Reform Act of 1995 (PSLRA). The Court's decision will benefit defendants by preventing plaintiffs from repeatedly filing class action suits as an end run around statutes of limitation. The majority rejected the concerns of the plaintiffs that limiting tolling to individual claims would incentivize a "needless multiplicity" of protective class-action filings, expressing faith in district courts' ability to manage such challenges. Defendants will need to be mindful to work with courts to limit the potential ill effects of duplicitous class actions.

The American Pipe Rule

In *American Pipe*, the Supreme Court established a tolling rule under which the timely filing of a class action tolls the applicable statute of limitations for members of the class. Should class certification be denied, other individual plaintiffs would still be able to intervene in the original suit (or, as the Court later held, file their own separate suits). *American Pipe* left open the question of whether tolling also applied to successive class actions. The First, Second, Fifth, and Eleventh Circuits later held that it did not. In 2015, the Sixth Circuit ruled the other way, permitting *American Pipe* tolling for a successive class action, and the Ninth Circuit followed suit in 2017.

China Agritech v. Resh

In *China Agritech*, the Supreme Court reversed the Ninth Circuit and held that *American Pipe* does not apply to successive class actions. Writing for an eight-member majority, Justice Ginsburg distinguished the case from *American Pipe*. Whereas many of the beneficial efficiencies of the class action mechanism would be lost if every possible class member had to file an individual suit, incentivizing additional plaintiffs seeking to serve as class representatives to file earlier would *enhance* court efficiency, by allowing the courts to choose among potential class representatives, delineate appropriate sub-classes, or identify obstacles to proceeding as a class action. The majority held that Rule 23 of the civil rules (relating to class actions) itself supported this conclusion, thereby strongly suggesting that the rule adopted by the majority applies to all class action claims, and not just the type of securities claim at issue in *China Agritech*.

In her concurring opinion, Justice Sotomayor questioned whether the majority's holding should apply to all successive class action suits. Sotomayor noted that the PSLRA was a particularly poor statute to receive the benefits of tolling because it already required plaintiffs to publish a nationwide notice alerting putative class members of the action in order to permit selection of the best class representative. Sotomayor feared that statutes without similar notice requirements might foreclose unknowing plaintiffs from participation as lead plaintiffs in class actions. Instead, Justice Sotomayor proposed that tolling should only be unavailable when class certification is denied for a reason that bears on the suitability of the claims for class treatment.

What does *China Agritech* mean for class actions defendants?

China Agritech is a significant win for class action defendants, who will not have to worry about plaintiffs continuously filing class action suits to extend statutes of limitation indefinitely. The complaint in *China Agritech*, for example, was the third successive class action to be filed asserting the same claims. The plaintiffs (and Justice Sotomayor in her concurrence) suggested that the majority's rule could be bad for defendants because it would lead to an increase in unnecessary, duplicative class action suits by plaintiffs seeking to preserve their ability to bring class action claims if the initial class suit failed. But the majority rejected those concerns, noting that there was no evidence that the same rule in the Second and Fifth Circuits had increased "protective" class action filings. The majority observed that traditional tools at district courts' disposal like the ability to stay, consolidate, or transfer proceedings would be enough to manage these cases. Class action defendants will need to work closely with their counsel to ensure that duplicative, but timely, class action filings are handled in a way that prevents plaintiffs a "second bite at the apple," if class certification is denied in the lead case.

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