

## Supreme Court and Class Actions Alert

June 12, 2018

### Key Points

- The U.S. Supreme Court held that the tolling provisions established in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974) apply to only individual claims, not to successive class actions.
- The Court's decision resolves a deep circuit split on the application of *American Pipe* tolling to future class actions.
- The Court's decision allows class action defendants to defeat successive class actions outside the statute-of-limitations period.



### The U.S. Supreme Court Narrows the Application of *American Pipe* Tolling to Class Actions

On June 11, 2018, in *China Agritech, Inc. v. Resh*, 584 U.S. \_\_\_\_ (2018), the U.S. Supreme Court held that the tolling provisions established in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974), apply to only subsequently filed individual actions, not more broadly to successive class actions. The Court's decision reverses and remands the 9th Circuit's decision and resolves a circuit split among nine circuits on the application of *American Pipe* tolling to successive putative class actions.

#### Background

Several China Agritech shareholders filed a putative class action in the Central District of California alleging that the company and its managers and directors violated the Securities Exchange Act of 1934. Notably, the named plaintiffs had previously been unnamed members of two nearly identical putative class actions where class certification was denied.

The Central District of California dismissed the plaintiffs' claims as time-barred under the Exchange Act's two-year statute of limitations. The district court rejected the plaintiffs' argument that, under *American Pipe*, the statute of limitations was tolled while the two previous putative class actions were pending. The court concluded that, although *American Pipe* allowed tolling for individual claims during the pendency of a putative class action, the Supreme Court had not yet determined whether *American Pipe* allowed tolling for an entirely new class action based upon a substantially identical class and that such tolling should not be allowed.

The 9th Circuit reversed, holding that the putative class action was not time-barred because the statute of limitations was tolled under *American Pipe* during the pendency of the previous putative class actions. The 9th Circuit held that "permitting future class action named plaintiffs, who were unnamed class

members in previously uncertified classes, to avail themselves of *American Pipe* tolling would advance the policy objectives that led the Supreme Court to permit tolling in the first place.”

### **The Supreme Court’s Opinion**

The Supreme Court unanimously reversed and remanded, with the majority opinion holding that *American Pipe* does not permit a successive class action after the expiration of the statute of limitations. Justice Ginsburg, writing for the Court, said that “[t]he ‘efficiency and economy of litigation’ that support tolling of individual claims . . . do not support maintenance of untimely successive class actions.”

Justice Ginsburg wrote that early assertion of competing class representative claims promotes efficiency by encouraging prompt filings seeking class certification. Justice Ginsburg said that to uphold the 9th Circuit’s decision would be contrary to the principles of efficiency and economy, and could allow limitless successive class suits to be filed after denial of class certification.

Although the suit is governed by the Private Securities Litigation Reform Act (PSLRA), respondents had argued that overruling the 9th Circuit opinion would violate their rights under Rule 23 of the Federal Rules of Civil Procedure. Justice Ginsburg disagreed, saying that this decision did not infringe on plaintiffs’ rights under Rule 23 because plaintiffs “have no substantive right to bring their claims outside the statute of limitations.” The ability to do so under *American Pipe* is a judicially crafted rule that does not affect any substantive right, Justice Ginsburg explained.

Justice Ginsburg also rejected plaintiffs’ argument that the ruling will lead to a surplus of protective class-action filings, noting that there was no showing of a disproportionate number of such filings in circuits that have held that *American Pipe* does not allow tolling of successive class actions.

Eight justices joined the opinion by Justice Ginsburg. Justice Sotomayor filed a separate opinion concurring in the judgment, but arguing that the Court’s holding should apply to only class actions subject to the PSLRA and should not extend to suits subject to Rule 23.

The Court’s ruling puts an end to successive class actions filed after the statute of limitations has expired.

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