

Litigation Alert

December 14, 2017

Key Points

- The U.S. Supreme Court granted a certiorari petition filed by China Agritech from the 9th Circuit's decision in *Resh v. China Agritech, Inc.*, 857 F.3d 994 (9th Cir. 2017). The Court will clarify whether its landmark ruling in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974) applies to individual claims only or, more broadly, to successive class actions.
- The Court's decision will likely resolve a circuit split on the application of *American Pipe* tolling to future putative class actions. The 1st, 2nd, 3rd, 5th, 8th and 11th Circuits have held that *American Pipe* tolls individual claims only, while the 6th, 7th and 9th Circuits have held that *American Pipe* tolls future class actions as well.
- The Court's ruling is expected to have a significant impact on class action jurisprudence.



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

On December 8, 2017, the U.S. Supreme Court granted a certiorari petition filed by China Agritech, Inc. from the 9th Circuit's decision in *Resh v. China Agritech, Inc.*, 857 F.3d 994 (9th Cir. 2017). In *Resh*, the 9th Circuit held that a putative class action was not time barred because the statute of limitations was tolled during the pendency of two prior putative class actions in which the plaintiffs were unnamed members. In reviewing the 9th Circuit's decision, the Supreme Court likely will clarify its landmark decision in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974), and resolve 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.

The 9th Circuit’s Opinion

The 9th Circuit reversed the lower court’s decision, 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 court noted that its ruling creates no “unfair surprise” for defendants because the pendency of a prior class action would put them on notice, and that its ruling would “promote[] economy of litigation” by reducing incentives for unnamed plaintiffs to file duplicative, protective class actions before the expiration of their own period of limitations. In addition, the court concluded that “the current legal system is adequate” to respond to concerns that the ruling would lead to the abusive filing of repetitive class actions, remarking that there is little to gain from frivolous suits. The court also reasoned that “ordinary principles of preclusion and comity will further reduce incentives to re-litigate frivolous or already dismissed class claims.”

The Supreme Court granted China Agritech’s petition for a writ of certiorari. The Court’s decision will likely clarify whether *American Pipe* applies to individual claims only or more broadly to successive class actions, thus resolving a circuit split among nine circuits. The 1st, 2nd, 3rd, 5th, 8th and 11th Circuits have held that *American Pipe* permits tolling for individual claims only, while the 6th, 7th and 9th Circuits have held that *American Pipe* allows tolling for future class actions.

The Court’s decision will likely have a significant impact on class action jurisprudence—particularly if it extends the availability of successive class action tolling to the six Circuits that currently do not recognize such tolling. We will continue to monitor this case and provide updates of any significant developments.

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