

SUPREME COURT REJECTS EXTENSION OF *AMERICAN PIPE* TO STACKED CLASS ACTIONS

On June 11, 2018, the U.S. Supreme Court strengthened important constraints on the period in which plaintiffs can timely pursue claims on behalf of a purported class of similarly-situated parties. In *China Agritech, Inc. v. Resh*,¹ the Court adopted the position of most federal appeals courts, holding that the so-called *American Pipe* tolling rule—which holds that the timely filing of a class action complaint "tolls" (or pauses) the applicable statute of limitations for individual claims by members of the purported class—does not toll the limitations period for successive class action complaints brought by would-be class members. The ruling continues the Supreme Court's recent trend of restricting the use of class actions and provides a degree of certainty for companies exposed to the threat of class action litigation by affirming that that threat must come to an end within the statutory limitations periods mandated by Congress.

BACKGROUND: *AMERICAN PIPE* TOLLING

The class action mechanism—set forth in Rule 23 of the Federal Rules of Civil Procedure—authorizes claimants to seek recovery on behalf of a purported class of non-parties with similar claims. To proceed as a class action (class "certification"), a plaintiff must establish, among other things, that common questions of law "predominate" over individualized issues, and that the plaintiff is a suitable representative for the class. Because a large certified class aggregates individually modest claims into a much larger action, defendants zealously contest class certification, resulting in a process that can take months or years—such that even preliminary decisions may come after the limitations period has expired. This risk may lead individuals to file duplicative actions to protect their rights, the outcome that class actions were designed to avoid.

The Supreme Court's 1974 decision in *American Pipe & Const. Co. v. Utah*² addressed this tension with a rule—extended a few years later in *Crown, Cork & Seal Co. v. Parker*³—tolling the statute of limitations for individual plaintiffs while a class action is pending. The Court explained that this rule promoted "litigative efficiency and economy" by removing potential class members' incentives to file a

¹ 584 U.S. ___, No. 17-432 (June 11, 2018).

² 414 U.S. 538 (1974).

³ 462 U.S. 345 (1983).

"needless multiplicity" of protective individual actions while a class complaint was pending.

Neither the *American Pipe* nor the *Crown, Cork* cases addressed whether the tolling rule also applied to subsequently-filed class actions. In this silence, the federal appeals courts had split on the issue.⁴

CHINA AGRITECH, INC. V. RESH

China Agritech involved the third of three successive securities fraud class actions filed on behalf of China Agritech shareholders alleging "fraud and misleading business practices" in connection with financial information included in China Agritech's SEC filings. The parties agreed that the two-year statute of limitations for plaintiffs' claims began on February 3, 2011, more than two years before the action was filed on June 30, 2014. However, plaintiffs argued that their claims were timely because the statute of limitations had been tolled by the two prior class actions, both of which had been denied certification.

The district court dismissed the third action as untimely, holding that the earlier class actions did not toll the statute of limitations because *American Pipe* tolling only applied to individual claims and not class actions. The Court of Appeals for the Ninth Circuit reversed and reinstated the case, reasoning that tolling the limitations period in successive class actions "advance[d] the policy objectives" of *American Pipe* tolling by "reducing incentives" for putative class members to "file duplicative, protective class actions."

The Supreme Court reversed the appeals court, holding that *American Pipe's* tolling doctrine does not apply to successive class action complaints. In an opinion authored by Justice Ginsburg and joined by all but one other member, the Court reasoned that the "efficiency and economy of litigation" that supports tolling of individual claims does not support tolling of subsequent class actions. The Court explained that *American Pipe* was concerned only with avoiding duplicative individual actions, rather than class actions, because "economy of litigation favors delaying those claims until after a class-certification denial." By contrast, "efficiency favors early assertion of competing class representative claims" because this permits the court to "select the best plaintiff with knowledge of the full array of potential class representatives and class counsel" or deny certification for claims not suited for class treatment "once for all would-be class representatives." The Court elaborated that early filings also "help ensure sufficient time remains under the statute of limitations, in the event that certification is denied for one of the actions or a portion of the class." The Court observed that the appeals court's contrary holding would destroy this efficiency by allowing multiple plaintiffs to "piggyback" on successive class action claims, "allow[ing] the statute of limitations to be extended time and again" for class litigants. The Court also found there was "little reason to think" that a decision refusing to toll successive class actions would encourage a "substantial increase" in protective class filings, citing the absence of such effects in the circuits that had adopted this rule previously and the inherent incentives of lead plaintiff status—such as the opportunity to "receive

⁴ Compare *Phipps v. Wal-Mart Stores, Inc.*, 792 F.3d 637, 652–53 (6th Cir. 2015) (applying *American Pipe* tolling to a successive class action) with, e.g., *Basch v. Ground Round, Inc.* 139 F.3d 6, 11 (1st Cir. 1998) (refusing to apply *American Pipe* tolling to a successive class action).

a share of class recovery above and beyond [a class representative's] individual claim"— that encourage class claimants to file early in the life-cycle of a litigation.

Applying this reasoning to the complaint against China Agritech, the Court reversed the Ninth Circuit's judgment and remanded the case for further proceedings, which presumably will result in dismissal of the case as untimely.

IMPLICATIONS

China Agritech resolves a circuit split and provides an important measure of certainty to companies facing the threat of class action litigation, by clarifying that the threat is not "limitless"; at a definable point, the threat of class litigation must subside. In that sense, the decision continues a broader trend by the Supreme Court of narrowing the grounds for class recovery. And while *China Agritech* involved a securities class action subject to the PSLRA,⁵ the decision will apply to purported class actions asserting violations of any law, including claims for derivatives and commodities market manipulation in violation of the Commodity Exchange Act, claims for price-fixing, bid-rigging, and market division in violation of the Sherman Antitrust Act, and products liability claims. These sorts of claims regularly inspire a number of parallel class complaints from parties vying for the opportunity to represent the class. But as the *China Agritech* Court recognized, even in the event its holding inspires an increase in class action filings (an outcome about which the Court was skeptical), federal district courts have "ample tools" to manage such complex litigations, including consolidating related cases in a single district or transferring actions into a multidistrict litigation. *China Agritech* does nothing to impair that "range of mechanisms" for efficient litigation.

That said, the facts of *China Agritech* may permit at least some future plaintiffs to avoid its holding. For example, because *China Agritech* addressed only a class complaint filed after prior efforts at class certification had *failed*, it remains to be seen whether the Court's holding will apply in equal measure to bar subsequent class actions filed after a previous class action had been at least *partially* certified.

⁵ Private Securities Litigation Reform Act of 1995, 109 Stat. 737. The PSLRA imposes a number of requirements on class actions brought under federal securities laws, including that counsel representing a would-be lead plaintiff notify all other shareholders who might wish to serve as lead plaintiff.

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