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SCOTUS Limits American Pipe Tolling to Individual Actions, Resolving Circuit Court Split on Untimely Subsequent Class Actions

When a class action lawsuit is filed in federal court, the statute of limitations applicable to the claims of absent class members is tolled—in essence, the clock is stopped on the running of the limitations period. Otherwise, putative class members might seek to file their own case during the limitations period as a hedge in case a class is not certified. Such multiple protective suits would frustrate the efficiency and economy of the class action procedure under Federal Rule of Civil Procedure 23. But the circuit courts have split over whether the benefit of such equitable tolling is limited to subsequent individual claims or also applies to follow-on class actions. The U.S. Supreme Court has now resolved that split, holding in *China Agritech, Inc. v. Resh*[1] that the tolling rule first announced in *American Pipe & Construction Co. v. Utah*[2] applies only to individual lawsuits. As a result, absent class members seeking to pursue separate class actions involving the same subject matter will be compelled to file such actions within the original limitations period.

China Agritech concerned a class action filed against an issuer of securities with allegations of fraud and misleading business practices that were identical to two prior class action lawsuits against the same defendant. The prior actions were filed within the two-year statute of limitations, but in both of those cases, the class representatives' motions for class certification were denied after protracted litigation. Plaintiff Michael Resh, a putative class member in the earlier cases, filed a third class action 18 months after the original statute of limitations had expired. The district court dismissed the case as untimely, concluding that the pendency of the first two cases did not toll the statute of limitations. That judgment was reversed by the Ninth Circuit, which reasoned that application of the tolling rule would actually promote efficiency by reducing the incentive for filing rival class action lawsuits during the pendency of the earlier-filed case. However, the Ninth Circuit's holding is contrary to decisions in other circuit courts examining the same issue.[3]

In *China Agritech*, the Supreme Court conclusively held that "*American Pipe* does not permit a plaintiff who waits out the statute of limitations to piggyback on an earlier, timely filed class action." Instead, the tolling rule applies only to an absent class member who later files an action in its individual capacity. According to the Court, *American Pipe* and its progeny[4] sought to preclude only "the needless multiplicity of individual actions by class members preserving their individual claims"; it did not sanction an endless succession of class actions, each of which is capable of defeating statute of limitations defenses by relying on the pendency of the failed class actions that preceded them. The Court also rejected having different tolling rules depending on why class certification was denied in the original case.

The Supreme Court further justified its holding by citing its consistency with the policy underlying Rule 23 of resolving class certification issues early and definitively. "[E]fficiency favors early assertion of competing class representative claims. If class treatment is appropriate, and all would-be representatives have come forward, the district court can select the best plaintiff with knowledge of the full array of potential class representatives and counsel." However, if class treatment is not appropriate, such a decision can be litigated once for all would-be class representatives.

The Court's ruling in *China Agritech* will provide class action defendants with a potent defense to untimely follow-on lawsuits in which putative class representatives attempt another bite at the class-certification apple after witnessing earlier failed attempts. Now, any competing class actions must be filed within the original statute of limitations, and if an earlier class action is pending, competing class actions could be subject to stay, consolidation or transfer.

[1] 584 U.S. ___, (2018).

[2] 414 U.S. 538 (1974).

[3] See, e.g., *Basch v. Ground Round, Inc.,* 139 F.3d 6 (1st Cir. 1998); *Griffin v. Singletary,* 17 F.3d 356 (11th Cir. 1994).

[4] *American Pipe* originally announced a tolling rule for claimants who sought to intervene in the class action following rejection of class certification. That tolling rule was later extended to subsequent separate actions in *Crown, Cork & Seal, Co. v. Parker,* 462 U.S. 345 (1983).

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