

# Supreme Court Reduces Exposure to Successive Class Actions

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On Monday, the U.S. Supreme Court held in *China Agritech, Inc. v. Resh*, No. 17-432, 584 U.S. \_\_\_, 2018 WL 2767565 (2018), that the equitable tolling doctrine established by its landmark decision, *American Pipe v. Utah*, does not permit the maintenance of successive class actions following the expiration of the applicable statute of limitations. This decision, which resolves a circuit split on the issue, is an important victory for class action defendants because it reduces their exposure to the serial re-litigation of class action claims.

## Background

In 1974, the Supreme Court held in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538, 553, that the filing of a class action tolls the applicable statute of limitations for all putative class members who make timely motions to intervene after class certification is denied. The Court reasoned that, absent such tolling, “[p]otential class members would be induced to file protective motions to intervene or to join in the event that a class was later found unsuitable,” thereby depriving class actions “of the efficiency and economy of litigation” they are intended to promote. *Id.* Later, in *Crown, Cork & Seal v. Parker*, 462 U.S. 345, 350 (1983), the Supreme Court expanded *American Pipe* tolling to include putative class members who, after the denial of class certification, wish to bring individual suits, rather than intervene in the existing one.

The impact of *American Pipe* and *Crown, Cork* is that unnamed class members can wait until class certification is denied to either join the initial action or file separate individual claims, notwithstanding the expiration of the statute of limitations. But these cases leave open the question of whether such tolling applies to the filing of successive *class* actions.

The Supreme Court addressed this question this week in *China Agritech*. There, the plaintiffs filed a putative securities fraud class action following the filing of two similar class actions, involving materially identical allegations, for which class certification had been denied. The U.S. District Court for the Central District of California dismissed the action as time-barred, and the Court of Appeals for the Ninth Circuit reversed. The Ninth Circuit, following earlier decisions by the Sixth and Seventh Circuits, 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.” *Resh v. China Agritech, Inc.*, 857 F.3d 994, 1004 (9th Cir.); see also *Sawyer v. Atlas Heating & Sheet Metal Works, Inc.*, 642 F.3d 560, 564 (7th Cir. 2011); *Phipps v. Wal-Mart Stores*, 792 F.3d 637, 652 (6th Cir. 2015).

In contrast to the Ninth Circuit's *China Agritech* decision, the First, Second, Fifth, and Eleventh Circuits had rejected the application of *American Pipe* tolling to subsequently filed class actions, while the Third and Eighth Circuits had held that that *American Pipe* tolling can apply to successive class actions only in certain circumstances, such as "where class certification has been denied solely on the basis of the lead plaintiffs' deficiencies as class representatives, and not because of the suitability of the claims for class treatment." *Yang v. Odom*, 392 F.3d 97, 111 (3d Cir. 2004); see also *Basch v. Ground Round, Inc.*, 139 F.3d 6, 11 (1st Cir. 1998); *Korwek v. Hunt*, 827 F.2d 874, 879 (2d Cir. 1987); *Salazar-Calderon v. Presidio Valley Farmers Ass'n*, 765 F.2d 1334, 1351 (5th Cir. 1985); *Great Plains Tr. Co. v. Union Pac. R. Co.*, 492 F.3d 986, 997 (8th Cir. 2007); *Griffin v. Singletary*, 17 F.3d 356, 361 (11th Cir. 1994).

## Supreme Court Decision

The Supreme Court reversed the Ninth Circuit decision, holding that the "'efficiency and economy of litigation' that support tolling of individual claims . . . do not support maintenance of untimely successive class actions; any additional class filings should be made early on, soon after the commencement of the first action seeking class certification." *China Agritech*, 2018 WL 2767565, at \*6.

The Court observed that a contrary interpretation of *American Pipe* would "allow the statute of limitations to be extended time and again; as each class is denied certification, a new named plaintiff could file a class complaint that resuscitates the litigation." *Id.* at \*8. The Court also reasoned that the early assertion of competing class representative claims allows the district court to "select the best plaintiff with knowledge of the full array of potential class representatives and class counsel." *Id.* at \*6. While the Court recognized that dueling class action filings "might not line up neatly," it noted that "district courts have ample tools at their disposal to manage the suits, including the ability to stay, consolidate, or transfer proceedings." *Id.* at \*10.

## Implications

The *China Agritech* decision has significant implications for class action defendants. Previously, defendants in many courts risked exposure to an endless series of nearly identical class actions because plaintiffs could continually refile putative class actions until a court granted class certification. Indeed, even where a defendant was able to secure a settlement with the named plaintiff in exchange for dismissal of the class action with prejudice, the risk remained that a new class action would ensue, thereby exposing the defendant to the same liability it sought to avoid through settlement. *China Agritech* eliminates the possibility of an endless tolling period, and thus allows defendants to resolve class actions with finality once the statute of limitations has run.

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