

STROOCK SPECIAL BULLETIN

Supreme Court Limits American Pipe's Impact On Putative Class Claims

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The United States Supreme Court clarified in China Agritech, Inc. v. Resh, 584 U.S. ____ (2018), that the tolling rule announced in American Pipe & Construction Co. v. Utah, 414 U.S. 538 (1974) (holding that the filing of a class action tolls the statute of limitations for claims of putative class members), does not apply to class claims following the denial of class certification; rather, the statute is tolled only for individual claims. Under the rule as clarified, once class certification is denied in a class action, only putative class members who intervene or pursue individual claims in a new action may rely on the prior tolling of the statute; absent class members who do not intervene or file separate actions may not.

This clarification resolves a circuit split between the Ninth, Seventh and Sixth Circuits and the First, Second, Fifth and Eleventh Circuits on the specific tolling issue presented, but it does not address a more frequently encountered class-related tolling issue—whether members of a putative class in a subsequent class action may rely on tolling of the statute when the earlier case is dismissed before a ruling on class certification. Nevertheless, the Court's decision provides support for an argument that tolling for the subsequent class in this circumstance is not available.

In China Agritech, the Court addressed the Ninth Circuit's holding that the statute of limitations was tolled despite the fact that class certification was denied in a previously filed action asserting the same claims. In the underlying action, plaintiff, on behalf of purchasers of China Agritech common stock, alleged violations of the Securities Exchange Act of 1934 that caused China Agritech's stock price to plummet. The first class action was filed in February 2011, shortly after the relevant causes of action accrued and the two-year limitations period commenced. In May 2012, the district court denied class certification in the first action. A second class action was filed in October 2012—still within the two-year limitations period—and the district court again denied class certification. Finally, a third class action was filed on June 30, 2014, which was after the statute of limitations expired. The district court dismissed the third class action as untimely, rejecting the argument that, under American Pipe and Crown, Cork & Seal Co. v. Parker, 462 U.S. 345 (1983), the prior actions tolled the time to pursue the third class action.

Although the majority of circuit courts supported the district court's dismissal of the third class complaint as untimely, the Ninth Circuit reversed. The Ninth Circuit reasoned 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.”

Writing for the Court, Justice Ginsburg rejected the Ninth Circuit’s reasoning. Initially, the Court explained that, without tolling, potential class members would be required to file a multiplicity of separate, individual actions or motions to intervene to preserve individual claims. This result, the Court reasoned, is “precisely the situation that Federal Rule of Civil Procedure 23 and the tolling rule of American Pipe were designed to avoid.” The Court explained that tolling the limitations period for individual claims promotes the “efficiency and economy of litigation” because, if class certification is granted, “the claims will proceed as a class and there would be no need for the assertion of any claim individually.”

Nevertheless, for class claims, the Court reasoned that “efficiency favors early assertion of competing class representative claims.” By excluding subsequent class claims from the tolling rule of American Pipe, potential class representatives are required to come forward with their claims early so that “the district court can select the best plaintiff [to be class representative] with knowledge of the full array of potential class representatives and class counsel.” Further, the Court noted, to benefit from equitable tolling, plaintiffs must demonstrate that they have been diligent in pursuit of their claims, and it makes little sense to extend a tolling rule to a litigant who has not been diligent. In addition, the Court explained, under the Ninth Circuit’s application of American Pipe, a statute of limitations could be extended indefinitely: “[A]s each class is denied certification, a new named plaintiff could file a class complaint and resuscitate[] the litigation.” Accordingly, the Court clarified that American Pipe does not apply to follow-on class actions filed after the expiration of the statute of limitations, at

least where certification has been denied in a prior class action asserting the same claims.

Significantly, the Court’s opinion applies to all class actions, and not just those brought under the Securities Exchange Act or governed by the Private Securities Litigation Reform Act of 1995 (“PSLRA”). Justice Sotomayor, in her separate opinion concurring in the judgment, would have crafted a more narrow rule confined to the facts of the case in light of the particular procedural requirements that the PSLRA imposes on class litigants, including notice to potential class members and requests for volunteers to act as lead plaintiffs early in the litigation. As Justice Sotomayor pointed out, the PSLRA’s notice requirements do not apply to most class actions, where putative class members are less likely to know about the existence of the action and their ability to bring a claim later if the class is not certified. Also significant is the Court’s rejection of Justice Sotomayor’s argument that American Pipe tolling could apply to claims where the underlying denial of class certification is due to inadequate representation, as opposed to substantive defects in the underlying claims; it is now clear that American Pipe tolling does not save either.

Although the Court did not reach the issue, the Court’s reasoning in China Agritech may also be relevant where an earlier putative class action is dismissed prior to the certification stage. Specifically, the Court’s decision provides support for an argument that tolling in such a circumstance is not available, and that a plaintiff who wishes to be a class representative must assert his or her claims within the original limitations period.

The attorneys of Stroock’s Financial Services Litigation, Regulation and Enforcement Group are well positioned to answer any questions that you may have about the scope and impact of this ruling as well as related issues.

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