

Supreme Court Halts Follow-On Class Actions

China Agritech decision limits reach of tolling exceptions under the court's precedent in American Pipe

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The U.S. Supreme Court's flurry of major end-of-session decisions included one that gives companies some relief should they face a class action.

On June 11, the U.S. Supreme Court unanimously ruled to disallow a practice defendants sometimes call "class action stacking." In *China Agritech v. Resh*, the court held that its precedent doesn't allow tolling of statutes of limitation in successive class actions. The decision resolves a circuit split that enabled plaintiffs to file new class actions in certain situations where the statute of limitations had expired.

While the case concerns a securities-related complaint, the *China Agritech* ruling will have an impact on class action defense across a range of

statutes, and companies can be more certain they won't see additional class actions after an attempt at one fails.

When a court denies a putative class of its class certification, members of that failed class can then promptly join an existing suit against the defendant or sue as individuals. But the issue before the Supreme Court was whether a putative class member could then file a new putative class action past the statute of limitations of the applicable law.

In the 6th and the 9th Circuit courts of appeals, plaintiffs have effectively been able to make multiple tries at class certification in the same underlying case. That is due to those circuits' reading of the tolling principles in the Supreme Court's 1974 decision in *American Pipe & Construction Co. v. Utah*, which grant exceptions to cer-

tain plaintiffs who file actions after the statute of limitations had expired. The 6th and 9th circuits have ruled that *American Pipe*'s exceptions extend to former putative class members who want to file a new putative class action.

Beijing-based fertilizer company *China Agritech* was facing multiple claims under the Securities Act of 1934. The case before the Supreme Court was the third successive putative class action that investors brought against the company that arose from the same fraud and misconduct allegations. After the district court denied class certification on the first two putative classes, Michael Resh filed his own class action attempt in June 2014, and a year and a half after the two-year statute of limitations had run on the Securities Act claims. The district court dismissed Resh's action as un-

timely, but the 9th Circuit reversed, reasoning that *American Pipe* kept his claim alive.

The U.S. Supreme Court disagreed. "*American Pipe* does not permit the maintenance of a follow-on class action past expiration of the statute of limitations," according to the opinion written by Justice Ruth Bader Ginsberg. The opinion also concluded that "endless tolling of a statute of limitations is not a result envisioned in *American Pipe*."

In truncating *American Pipe*'s reach, the court said Rule 23 of the Federal Rules of Civil Procedure precludes untimely successive class actions and prefers that class certifications get decided early on in litigation.

The court didn't condemn the

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practice of multiple class action filings, which “may aid a district court in determining, early on, whether class treatment is warranted, and if so, which of the contenders would be the best representative.” But those filings should be timely, and Rule 23 encourages those filings to come “sooner rather than later,” according to the opinion.

Denver-based attorney Jessica Fuller, who co-chairs Lewis Roca Rothgerber Christie’s litigation practice group as well as the firm’s class action group, said the China Agritech decision “is a definite victory for class action defendants.”

Before the decision, defendants could be on the receiving end of “endless” putative class actions over the same dispute, Fuller said. If a class action were denied certification, plaintiffs could turn around and file another one according to the 6th and 9th Circuit’s reading of American Pipe. “It was akin to a game of whack-a-mole that class action defendants shouldn’t be facing,” she added.

China Agritech’s practical takeaway for companies, Fuller said, is that they “can now count on some measure of finality” when a putative class action fails and the statute of limitations has run. Granted, putative class mem-

bers didn’t lose the ability to file their own individual claims at that point according to American Pipe’s tolling exception, which is clear from the opinion, Fuller said.

“I think it’s refreshing that the court took such a practical approach and created a clear ruling here that gives parties certainty,” she added.

While the court’s decision was

unanimous, Justice Sonia Sotomayor raised a wrinkle in her concurrence. Her view was that the court went too far in prohibiting successive class actions for all types of claims, and not just the securities claims at issue in China Agritech’s underlying case.

“Despite the Court’s misstep in adopting an unnecessarily broad rule, district courts can help mitigate the

potential unfairness of denying American Pipe tolling to class claims not subject to the [Private Securities Litigation Reform Act],” Sotomayor wrote in her concurrence. “Where appropriate, district courts should liberally permit amendment of the pleadings or intervention of new plaintiffs and counsel.”•

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