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China Agritech, Inc. v. Resh: U.S. Supreme Court Holds That a Pending Class Action Does Not Toll the Statute of Limitations for Future Class Action Claims

Decision Reinforces the Effect of the Court's Recent Decision in *CalPERS v. ANZ Securities, Inc.*

SUMMARY

On June 11, 2018, the U.S. Supreme Court issued its opinion in *China Agritech, Inc. v. Resh*, holding that a pending putative class action does not toll the statute of limitations for future claims brought on behalf of a class. In reversing a decision from the Ninth Circuit, the Supreme Court sided with the majority of federal appeals courts that have held that, although a putative class action tolls the statute of limitations for future individual claims, it does not toll it for successive class actions under Federal Rule of Civil Procedure 23. Together with the Court's decision last Term in *CalPERS v. ANZ Securities, Inc.*, which held that a putative class action does not toll a statute of repose, the Court has now cabined the period in which a defendant faces class action exposure based on a certain set of allegations, thus allowing companies to better assess the risks they face from putative class action suits.

BACKGROUND

In 1974, the U.S. Supreme Court held in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974), that a class action filing tolls the statute of limitations for members of the putative class, such that those members could later intervene as individual plaintiffs if the class was not certified. The Court's later decision in *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983), expanded *American Pipe* by applying it to separate individual lawsuits (as opposed to intervention in the main action). The upshot of this

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doctrine—commonly referred to by courts as “*American Pipe* tolling”—is that the statute of limitations as to similar individual claims is tolled as long as class claims are pending. As the *American Pipe* Court explained, Federal Rule of Civil Procedure 23, which governs class actions, was designed to promote the “efficiency and economy of litigation,” and tolling the relevant statute of limitations for individual claims during the pendency of class claims avoids the “needless duplication of motions” filed by putative class members solely for the purpose of preserving their right to proceed later, individually, if the class is not certified.¹

In 2011, China Agritech shareholders filed a putative federal securities fraud class action against the company alleging that “fraud and misleading business practices” caused the company’s stock price to drop.² The District Court denied class certification the following year, and the named plaintiff-shareholders settled their individual claims soon thereafter.³ In October 2012, still within the original limitations period that all agreed commenced on February 3, 2011, a new set of plaintiffs filed another putative class action complaint containing “materially identical allegations.”⁴ The District Court again refused to certify a class, and the parties again settled on an individual basis.⁵ In 2014, a year and a half after the applicable statute of limitations had expired, plaintiff Michael Resh, who was not involved in either of the earlier proceedings, filed a third “materially identical” putative class action complaint against China Agritech.⁶ The District Court dismissed the complaint as untimely, holding that the filing of the earlier actions did not toll Resh’s class claims.⁷ The Ninth Circuit reversed, rejecting the contrary decisions of at least four other Courts of Appeals and holding that the *American Pipe* tolling doctrine served to toll not only individual claims, but also claims brought on behalf of a putative class.⁸

The U.S. Supreme Court granted *certiorari* to resolve a split among the Courts of Appeals over whether “otherwise-untimely successive class claims may be salvaged by *American Pipe* tolling.”⁹

THE SUPREME COURT’S DECISION

In an opinion authored by Justice Ginsburg and joined by seven justices, the U.S. Supreme Court reversed the Ninth Circuit, and held that the *American Pipe* tolling doctrine does not apply to successive class actions, as opposed to successive individual actions. Noting that its previous decisions did not address the question of successive class actions, the Court reasoned that the logic underlying *American Pipe* did not similarly permit a plaintiff to “wait[] out the statute of limitations” and “piggyback” class claims “on an earlier, timely filed class action.”¹⁰ The Court explained that the “efficiency and economy of litigation” are not furthered by allowing successive class actions beyond the applicable statute of limitations.¹¹ In fact, as the Court explained, efficiency is *increased* by the early filing of class claims: “[i]f 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 class counsel,” and “if the class mechanism is not a viable option for the claims, the decision denying

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certification will be made at the outset of the case, litigated once for all would-be class representatives.”¹² Moreover, the Court noted that, even if its decision spurred additional “protective” class action filings—that is, class action complaints filed solely for the purpose of protecting plaintiffs’ ability to bring class claims later if and when class certification is denied in the original class action—district courts have “ample tools at their disposal to manage the suits, including the ability to stay, consolidate, or transfer proceedings” or to deal with the cases through multi-district litigation.¹³

Importantly, the Court made clear in its opinion that its determination was not limited to federal securities law claims subject to the Private Securities Litigation Reform Act of 1995 (“PSLRA”), such as those at issue in *China Agritech*. Indeed, the Court stressed that both Rule 23 and the PSLRA “evinced[] a preference for preclusion of untimely successive class actions.”¹⁴ The Court pointed to the 2003 amendments to Rule 23 that permit district courts more flexibility in allowing class discovery and considering whom to designate as class counsel as evincing an intent to encourage earlier decisions regarding disputed issues in putative class actions.¹⁵ And the Court noted that the PSLRA also exhibited a preference for representatives filing their claims at the outset of litigation, inasmuch as the PSLRA’s mandatory notice requirement “aims to draw all potential lead plaintiffs into the suit” so that the district court can select the best among them as class representative and thus avoid duplicative litigation.¹⁶

The Court also observed that permitting successive class action claims in this context, unlike later individual claims, could result in “limitless” and “endless” class action filings related to the same conduct, because the statute of limitations would be continuously tolled with each subsequent filing. Although the Court recognized that the statute of repose applicable to federal securities claims would eventually foreclose these filings, it noted that statutes of repose “are not ubiquitous” and that many claims under other state or federal laws are not subject to repose in the same manner.¹⁷

Justice Sotomayor separately concurred only in the judgment. Justice Sotomayor agreed that *American Pipe* should not be available for successive class claims brought under the PSLRA, given its unique procedure.¹⁸ But Justice Sotomayor disagreed with the majority’s opinion to the extent that it extended to other types of class actions brought under Rule 23, particularly because Rule 23 (unlike the PSLRA) does not provide for precertification notice to other putative class members or a process for district courts to choose the most adequate class representative. Instead, Justice Sotomayor suggested that, with respect to non-PSLRA class actions brought under Rule 23, lower courts could exercise their “comity” power to mitigate issues or costs associated with excessive tolling or, alternatively, the Court could, as a matter of equity, prohibit *American Pipe* tolling where class certification was denied “for a reason that bears on the suitability of the claims for class treatment.”¹⁹ The majority opinion, however, specifically rejected those suggestions.

IMPLICATIONS

China Agritech resolves an important Circuit split concerning class action practice. As a result of the decision, defendants no longer face the risk in some Circuits of successive class actions being filed years after successfully defending against an initial class action. As is evident from the Court’s decision, defendants now have a significant measure of protection—beyond that provided by statutes of repose—from having to face countless and “limitless” class actions stemming from the same set of operative facts as a result of the continuous tolling of the applicable limitations period. The emphasis placed in this decision, as well as in last Term’s *ANZ* decision, on providing finality in class litigation should only serve to enhance the importance of the class certification phase to defendants facing putative class claims.

As was the case with *ANZ*, the decision theoretically could lead to an uptick in “protective” class action filings by plaintiffs seeking to ensure that a case can proceed as a class action if the case is dismissed or class certification is denied on grounds that would not apply to other plaintiffs or to distinguishable allegations in a complaint. However, even if this decision leads to an increase in class action filings—and, as the Court noted in its opinion, there is no evidence to suggest that this will actually occur—pushing plaintiffs to file class claims earlier will likely inure to the benefit of most defendants, and district courts have various tools available to consolidate or coordinate such matters, as is common under the PSLRA and in the context of multi-district litigation.

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ENDNOTES

- 1 *American Pipe & Const. Co. v. Utah*, 414 U.S. 538, 553 - 54 (1974).
- 2 *China Agritech, Inc. v. Resh*, et al., 584 U.S. ____, No. 17-432, slip op. at 2-3 (June 11, 2018).
- 3 *Id.* at 3.
- 4 *Id.* at 2 - 4.
- 5 *Id.* at 4.
- 6 *Id.* at 2 - 4.
- 7 *Id.* at 4.
- 8 *Resh v. China Agritech, Inc.*, 857 F.3d 994, 1004 (9th Cir. 2017).
- 9 *China Agritech*, slip op. at 4 - 5.
- 10 *Id.* at 6.
- 11 *Id.* at 5 - 6.
- 12 *Id.* at 7.
- 13 *Id.* at 7, 14.
- 14 *Id.* at 7 - 8.
- 15 *Id.*
- 16 *Id.* at 8 - 9.
- 17 *Id.* at 10 - 11.
- 18 *Id.* at 1 (Sotomayor, J., concurring in the judgment).
- 19 *Id.* at 5 (Sotomayor, J., concurring in the judgment).

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