

# Supreme Court Prohibits Stacking of Successive Class Actions Beyond Limitations Period

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The Supreme Court ruled today that judicially created principles that toll statutes of limitations for class members in timely filed class actions apply only to subsequently filed individual actions, not to follow-on class actions filed outside the limitations period. The decision in [\*China Agritech, Inc. v. Resh\* \(No. 17-432\)](#) thus eliminates the specter of a potentially infinite series of class actions in which each class representative claims that limitations periods were tolled by the pendency of the prior class actions.

*China Agritech* was a securities class action under the Securities Exchange Act of 1934, which has a five-year statute of repose that sets an untollable outer limit on the filing of claims. But many other causes of action are not governed by statutes of repose. The *China Agritech* decision should have particular impact on those types of cases.

## Background

In 1974, the Supreme Court held in [\*American Pipe & Construction Company v. Utah\*](#) that the timely filing of a class action tolls the applicable statute of limitations for all persons encompassed by the class complaint so that class members can timely intervene as individual plaintiffs – without regard to limitations concerns – if class-action status is denied. The Court broadened this principle in 1983 in [\*Crown, Cork & Seal Co. v. Parker\*](#), holding that *American Pipe* tolling applies as well to class members who wish to bring separate individual actions outside the limitations period.

*American Pipe* and *Crown, Cork* addressed only putative class members who wished to pursue *individual* claims after denial of class certification. Lower courts disagreed for several decades about whether *American Pipe* tolling also covers subsequently filed *class* actions.

The Ninth Circuit in *China Agritech* concluded that such tolling could apply to class actions, reasoning that tolling would promote economy of litigation by reducing the incentives for filing multiple lawsuits and would not unfairly surprise defendants. Other appellate courts disagreed and rejected the use of *American Pipe* tolling for successive class actions filed outside the limitations period. The Supreme Court has now resolved the circuit split.

## Supreme Court's Decision

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The Court – in an opinion by Justice Ginsburg joined by seven other Justices – held that “*American Pipe* tolls the statute of limitations during the pendency of a putative class action, allowing unnamed class members to join the action individually or file individual claims if the class fails. But *American Pipe* does not permit the maintenance of a follow-on class action past expiration of the statute of limitations.”

The Court observed that the principles of “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.” The Court reasoned that, if class treatment is appropriate, the judicial system would benefit from having all potential class representatives present themselves at the beginning of the proceedings, so the district court could select class representatives and class counsel “with knowledge of the full array of” applicants.

The Court was also concerned that extending *American Pipe* tolling to follow-on class actions “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.” The Court recognized that this danger is less severe where statutes of repose apply, as under the Exchange Act – but “[s]tatutes of repose, however, are not ubiquitous.”

The Court seemed untroubled by the possibility that its ruling could cause a flood of protective class actions. The plaintiffs had not shown that the Second and Fifth Circuits – which had long rejected *American Pipe* tolling for successive class actions – “have experienced a disproportionate number of duplicative, protective class-action filings.” The Court also observed that prospective class representatives have “every reason to file a class action early, and little reason to wait in the wings, giving another plaintiff first shot at representation.”

Justice Sotomayor concurred in the judgment, but would have limited the holding to securities class actions, where a statute of repose exists and a statutory procedure governs selection of lead plaintiff and notice to the putative class when the first class action is filed.

## Implications

The *China Agritech* decision should be welcome news for defendants in circuits that have allowed (or not rejected) class-action tolling for successive class actions. The decision confirms current practice in the majority of other circuits.

The ruling raises several interesting questions for the future.

First, time will tell whether the Court was correct in downplaying the risk of multiple protective class actions. The Court saw advantages from multiple filings, which would present district courts with a broader choice of potential class representatives and class counsel. And the Court noted that “district courts have ample tools at their disposal to manage the suits, including the ability to stay, consolidate, or transfer proceedings.”

But if the rate of multiple filings increases, courts’ case-management tools might not always be as effective as the Court surmised. If overlapping class actions are filed in federal and state courts, the cases cannot be consolidated in or transferred to a single forum. Litigants will need to appeal to the courts’ discretion to stay one or more cases in favor of others. This problem will be less severe in

securities class actions under the Exchange Act, which provides for exclusive federal jurisdiction. But the issue could arise in cases where concurrent federal- and state-court jurisdiction exists. For example, class actions under the Securities Act of 1933 can be filed in federal or state court – and state-court class actions cannot be removed to federal court, as the Supreme Court held several months ago in *Cyan, Inc. v. Beaver County Employees Retirement Fund*.

Second, the Court observed that the process for selecting a lead plaintiff in securities class actions under the Private Securities Litigation Reform Act of 1995 “aims to draw all potential lead plaintiffs into the suit so that the district court will have the full roster of contenders before deciding which contender to appoint.” The Court noted that “district courts often permit aggregation of plaintiffs into plaintiff groups, so even a small shareholder could apply for lead-plaintiff status, hoping to join with other shareholders to create a unit with the largest financial interest.”

A number of courts, however, have rejected aggregation of plaintiffs who did not previously have any connection to each other and who first came together in a group solely for litigation purposes, to try to enhance their lead-plaintiff application by increasing their collective losses. The Court did not specifically endorse the formation of lead-plaintiff groups, but we will see whether the footnote in *China Agritech* changes district courts’ views about the appropriateness of multi-plaintiff groups that are formed solely for the litigation.

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