

Supreme Court Prevents Successive Class Actions from Reviving Time-Barred Claims

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In most wage and hour cases, each workweek gives rise to a separate claim, at least for statute of limitations purposes. Thus, an employee seeking payment for alleged off-the-clock work or an independent contractor claiming misclassification and entitlement to overtime ordinarily may seek back wages and related recovery only for work performed within a set amount of time—usually two to six years preceding the filing of the complaint, depending on the jurisdiction—preceding the filing of the complaint. But what happens to the statute of limitations when a plaintiff tries to bring a class action under state law, the court denies class certification, and a new plaintiff seeks to bring a subsequent class action presenting the same claims?

On June 11, 2018, the Supreme Court provided the answer in [China Agritech, Inc. v. Resh](#). In short, the Court held that although a class action suspends the running of the limitations period for *individual* potential class members who subsequently seek to join a suit or to file their own individual case, the class action does *not* permit the filing of subsequent time-barred class actions.

***American Pipe* Tolling**

The Supreme Court first addressed the interplay of class actions and statutes of limitations more than four decades ago. In *American Pipe & Construction Co. v. Utah*, the Court concluded that a timely-filed complaint seeking relief on behalf of a class under Rule 23 of the Federal Rules of Civil Procedure suspends the running of the statute of limitations for potential class members, and that, upon the denial of class certification, members of the unsuccessful class may intervene in the original case without erosion of their claims to the statute of limitations. 414 U.S. 538, 544, 552-53 (1974).

Nine years later, the Court concluded that so-called *American Pipe* tolling applies not only when members of the pleaded class intervene in the original suit, but also when they file their own individual cases. *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 350, 353-54 (1983). An open question following *American Pipe* and *Crown, Cork* is whether these tolling principles also apply to subsequent class actions.

The Supreme Court's Ruling

In *China Agritech*, a company's stock price dropped following public disclosure of allegedly

fraudulent conduct by the company. Claims accrued on February 3, 2011, and on February 11, 2011, a plaintiff filed a putative class action under the Securities Exchange Act of 1934, which provides for a two-year statute of limitations. The court denied class certification in May of 2012, and the original case settled in September 2012, leading to dismissal.

The following month, the same counsel filed a second putative class action against the company alleging the same claims on behalf of a new named plaintiff. The court again denied class certification, leading to another settlement and dismissal.

On June 30, 2014—more than two years after the February 3, 2011 accrual of the claims—yet another plaintiff, represented by new counsel, commenced a third putative class action, which made its way to the Supreme Court. The district court dismissed the complaint as untimely, holding that the first two class complaints did not toll the time to bring further class claims. The U.S. Court of Appeals for the Ninth Circuit reversed.

The Supreme Court granted certiorari to resolve a three-way split among the federal appellate courts on the tolling issue. The Court framed the question presented as follows: “Upon denial of class certification, may a putative class member, in lieu of promptly joining an existing suit or promptly filing an individual action, commence a class action anew beyond the time allowed by the applicable statute of limitations?” (Slip Op. at 2.) Justice Ginsburg’s answer, in a decision joined by seven other justices, was that “*American Pipe* does not permit the maintenance of a follow-on class action past expiration of the statute of limitations.” (*Id.*)

The Court noted that the reason for *American Pipe* tolling for individual claims is that “economy of litigation favors delaying those claims until after a class-certification denial. 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.” (Slip Op. at 6.) If a court denies class certification, “only then would it be necessary to pursue claims individually.” (*Id.*)

But when a case involves class claims, “efficiency favors early assertion of competing class representative claims. If 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.” (Slip Op. at 7.) In cases in which “the class mechanism is not a viable option for the claims, the decision denying certification will be made at the outset of the case, litigated once for all would-be class representatives.” (*Id.*)

The Court cautioned that the plaintiffs’ “proposed reading 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.” (Slip Op. at 10.) The Court observed that although “[t]he Federal Rules [of Civil Procedure] provide a range of options to aid courts” in managing complex litigation, “[w]hat the Rules do not offer is a reason to permit plaintiffs to exhume failed class actions by filing new, untimely class actions.” (*Id.* at 14-15.)

The Concurrence

Concurring in the judgment only, Justice Sotomayor took issue with the Court’s holding as applied to cases outside the securities context. She addressed several differences between the procedures required by the Private Securities Litigation Reform Act, including publication of notice of the filing of a putative securities class action, designed to encourage active participation early in the case by other potential lead plaintiffs and counsel, not required for other class actions under Rule 23.

(Concurrence at 2-4.) Justice Sotomayor agreed with the denial of tolling in the case before the Court, but she would have limited the ruling to cases subject to these additional procedural requirements and would not have issued a decision applicable to all Rule 23 cases. (*Id.* at 1, 7.)

What the Decision Means for Employers

In light of *China Agritech*, employers should expect courts to reject the use of *American Pipe* tolling to allow plaintiffs in wage and hour putative class actions to seek relief for workweeks that are outside the applicable limitations period. Courts will likely continue to allow *individual* claims for those otherwise time-barred workweeks when supported by *American Pipe* tolling. In addition, courts may continue to allow subsequent class actions by members of previously denied classes, but without the benefit of tolling. As always, employers faced with a wage and hour putative class action should carefully consider all available defenses, including the statute of limitations as to individual and class claims.

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