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The Supreme Court Knocks Down “Stacked” Class Action Suit

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On Monday, the Supreme Court issued its opinion in *China Agritech, Inc. v. Resh et al.*, No. 17-432, resolving a longstanding question about the operation of statutes of limitations in class actions. According to the Court, although a pending class action tolls the statute of limitations for absent class members relating to their *individual* claims, it does not permit them to avoid the statute of limitations for a new class action. The opinion clarifies the reach of what is known as *American Pipe* tolling, eliminating the concern that a statute of limitations can be extended indefinitely by “stacking” class actions on top of one another.

This case arose after an enterprising plaintiff relied on the Supreme Court’s 1974 decision in *American Pipe & Construction Co. v. Utah* to bring a securities class action a year and a half after the statute of limitations had expired. The plaintiff had been an unnamed class member in an earlier putative class action on the very same claims. When the earlier class action failed, he filed a new one, relying on *American Pipe* to argue that the limitations period had been tolled while the earlier suit was pending. The district court dismissed his new class action complaint as time barred. The Ninth Circuit reversed, holding that *American Pipe* allowed him to claim the benefit of tolling for purposes of filing a new class action lawsuit, and reasoning that this outcome “would advance the policy objective that led the Supreme Court to permit tolling in the first place.” The Supreme Court granted certiorari to resolve a split among the circuits on this issue.

The Supreme Court unanimously rejected the Ninth Circuit’s view, holding that “*American Pipe* does not permit a plaintiff who waits out the statute of limitations to piggyback on an earlier, timely filed class action.” The Court

explained that *American Pipe* “addressed only putative class members who wish to sue individually after a class certification denial.” According to the Court, the policy objective of *American Pipe* does “not support maintenance of untimely successive class actions.” Instead, consistent with the goals of “efficiency and economy of litigation,” “any additional *class* filings should be made early on, soon after the commencement of the first action seeking class certification.” To hold otherwise would be to “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.” Because the tolling for these stacked claims “could be limitless,” the Court reversed the Ninth Circuit’s decision and remanded the case.

Justice Sotomayor was the only justice to write separately. She concurred in the judgment, explaining that the Court’s conclusion should be limited to cases that fall under the Private Securities Litigation Reform Act (PSLRA). The majority’s decision drew upon the PSLRA for support but adopted a rule that applies more broadly.

The Court’s clarification of *American Pipe* is a welcome development for defendants. Among other things, it should help to make class action litigation more predictable and to ensure that class actions proceed within a reasonable time after the underlying events.

If you have questions, please contact any of the Appellate & Critical Motions, Class Actions, and Securities Litigation attorneys listed on the next page or your usual Winston & Strawn contact.

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