

INSIGHTS

## In Securities Case, U.S. Supreme Court Curbs Successive Class Actions

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By: [W. Stephen Benesh](#)

Last week, the United States Supreme Court reigned in plaintiffs' ability to file new class action suits outside the statute of limitations.

The Court decided in *China Agritech* that, following denial of class certification, a putative class member may not commence a class action anew beyond the time allowed by the applicable statute of limitations.<sup>1</sup>

The unanimous judgment is a win for class action defendants. It forbids the endless tolling of statutes of limitation that some circuits had allowed, reduces defendants' exposure to serial relitigation, and removes a forum-shopping incentive.

Since *American Pipe* in 1974, it has been well established that, while class certification is pending, the statute of limitations is tolled for putative class member's *individual* claims.<sup>2</sup> That way, if the class action fails, individual plaintiffs will still have an opportunity to file their own separate claims against the defendant.

A circuit split emerged about whether that same rule applied when, after class certification fails, an unnamed putative class member chooses to file a new class action against the defendant instead of pursuing their own individual claims. The Sixth and Ninth Circuits recently answered that it does, but the Second and Fifth Circuits had held the opposite for decades—joined in the 1990s by the First and Eleventh circuits.

The case underlying *China Agritech* was the third class action brought on behalf of purchasers of China Agritech's common stock, alleging violations of the Securities Exchange Act of 1934. "In short, the successive complaints each make materially identical allegations that China Agritech engaged in fraud and misleading business practices, causing the company's stock price to plummet when several reports brought the misconduct to light."<sup>3</sup> There was no dispute over the accrual date of either the Exchange Act's two-year limitation period or the Act's five-year repose period.

Class certification was denied in the first two actions. A shareholder, who had not sought lead-plaintiff status in either earlier action and who was represented by counsel who had not appeared in those actions, filed a third class action complaint "a year and a half after the statute of limitations expired."<sup>4</sup>

The district court dismissed this third class action as untimely. The Ninth Circuit reversed, holding that “permitting future class action named plaintiffs, who were unnamed class members in previously uncertified classes, to avail themselves of *American Pipe* tolling . . . would advance the policy objectives that led the Supreme Court to permit tolling in the first place.”<sup>5</sup>

The Supreme Court reversed the Ninth Circuit, crisply holding: “Time to file a class action falls outside the bounds of *American Pipe*.”<sup>6</sup> The Court recognized that a contrary ruling “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.”<sup>7</sup> That is, as soon as class certification is denied, a new named plaintiff could simply try again with a different judge, and serial relitigation and forum shopping could continue until a judge willing to certify the class was found. This holding appears to apply to all class actions, not just securities cases.

Justice Sotomayor concurred in the judgment only. She agreed with the Court’s outcome in cases, like this one, governed by the Private Securities Litigation Reform Act of 1995 (PSLRA).<sup>8</sup> She would not, however, go further and hold that the same is true for class actions not subject to the PSLRA.

The Court’s decision might result in an increase in the number of protective class-action filings—competing named plaintiffs (and the lawyers representing them) must all file complaints before the statute of limitations runs—but, as the Court recognized, “district courts have ample tools at their disposal to manage the suits, including the ability to stay, consolidate, or transfer proceedings.”<sup>9</sup>

While “[m]ultiple timely filings might not line up neatly [and] could be filed in different districts, at different times,” the increased certainty that comes with an untollable statute of limitations is a clear win for defendants facing class action claims.<sup>10</sup>

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<sup>1</sup> *China Agritech, Inc. v. Resh*, No. 17-432, 2018 WL 2767565 (U.S. June 11, 2018).

<sup>2</sup> *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974); *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 350 (1983).

<sup>3</sup> *China Agritech*, slip op. at 4.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> *Id.* (quoting *Resh v. China Agritech, Inc.*, 857 F.3d 994, 1004 (9th Cir. 2017), rev’d and remanded, No. 17-432, 2018 WL 2767565 (U.S. June 11, 2018)).

<sup>6</sup> *Id.* at 11.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* (Sotomayor, J., concurring in the judgment).

<sup>9</sup> *Id.* (majority opinion).

<sup>10</sup> *See id.*