

CLIENT ALERT

Supreme Court Clarifies that Pending Class Actions Toll Only Individual Claims, Not Successive Class Actions: *China Agritech, Inc. v. Resh*

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On June 11, 2018, the U.S. Supreme Court held in *China Agritech, Inc. v. Resh* that the filing of a putative class action equitably tolls the limitations period for putative class members to file individual claims, but does not toll the limitations period for filing new class actions.

Nearly 45 years ago, the Supreme Court held in *American Pipe and Construction Co. v. Utah*, 414 U.S. 538 (1974), that the filing of a class action lawsuit tolls the limitations period for all putative class members unless and until class certification is denied. In that case, the Court permitted absent class members to utilize the tolling period to either (i) intervene as individuals in the action in which certification was denied or (ii) file new lawsuits in their individual capacities. But *American Pipe* left open the question of whether absent class members could rely on the tolling period to file a new class action based on the same claims. Over time, a Circuit split developed, with several courts, including the Second and Fifth Circuits, holding that successive class claims are not tolled, but the Ninth Circuit holding that the deadline for filing successive class actions is tolled under *American Pipe*.

Yesterday's decision resolves this question conclusively. With Justice Ginsberg writing for an eight-justice majority in which Justice Sotomayor concurred, the Court's opinion holds 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." *China Agritech*, 584 U. S. ____ (2018) (Slip Op. at 2). The Court explained that with this narrow construction, *American Pipe* tolling does not offend the policy underlying statutes of limitations because "[t]he time to file individual actions once a class action ends is finite, extended only by the time the class suit was pending." *Id.* at 10. In contrast, "the time for filing successive class suits, if tolling were allowed, could be limitless," as each newly filed class action would result in additional tolling. *Id.* "The '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." *Id.* at 6.

This decision has significant practical implications for class action defendants. Previously, a defendant who defeated class certification could not be certain that potential future liability would be limited to individual claims. In the aftermath of *China Agritech*, defendants now have certainty that if class certification fails in one lawsuit and the limitations period has expired, the defendant will not be subject to follow-on class actions from absent class members waiting in the wings.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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