

# Client Alert

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## Supreme Court Rejects Seriatim Filing of Follow-on Class Actions After the Statute of Limitations Expires

On June 11, 2018, the Supreme Court announced that when class certification is denied in an action, absent plaintiffs cannot file a new putative class action if the statute of limitations on the underlying claims has already expired. The Court's holding in *China Agritech v. Resh, et al.*, 584 U.S. \_\_\_\_ (2018) is an important development for companies that routinely face class actions. The decision sends a message to the plaintiffs' bar that, while they can toll the statute of limitations on *individual* claims by filing a putative class action, they cannot use the benefit of that tolling to continue to file class actions indefinitely if certification is denied.

*China Agritech* involved a third attempt by plaintiffs to bring a class action alleging violations under the Private Securities Litigation Reform Act of 1995 (PSLRA). Certification had been denied in the first two iterations of the putative class suit, and China Agritech settled with the named plaintiffs in those suits on an individual basis shortly thereafter. By the time the new plaintiffs filed the third putative class action, the statute of limitations on their PSLRA claims had been expired for a year and a half. The district court dismissed the complaint, holding that the prior two actions did not operate to toll the statute of limitations for the initiation of class actions. On appeal, the Ninth Circuit reversed, holding that the policy objectives announced in the Supreme Court's previous decision in *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974) would be advanced by permitting the plaintiffs to take advantage of the tolling of the statute of limitations on a classwide basis.

In a unanimous ruling written by Justice Ginsburg, the Supreme Court rejected the Ninth Circuit's attempt to expand the reach of *American Pipe*. The Supreme Court noted that *American Pipe* held only that "the commencement of the original class suit tolls the running of the statute [of limitations] for all purported members of the class who make timely motions to intervene after the court has found the suit inappropriate for class action status." 414 U.S. at 553. In other words, *American Pipe* holds that if a court denies class certification, the named plaintiffs are still permitted to pursue each of their claims on an individual basis—and absent putative class members may file motions to intervene in the pending action or file their own individual actions—even if the statute of limitations on their claims has otherwise expired, provided that the putative class action was timely filed.

In a unanimous opinion, the Court held that the policy objectives justifying the *American Pipe* rule—namely, that it promotes efficiency by permitting courts to decide the merits of classwide treatment as early as possible without the distraction of individuals moving to intervene in order to preserve their rights in the event the class is later not certified—did not extend to later-filed *class* actions. As the Court observed, if plaintiffs were permitted to file new class actions after a failed bid for class certification, the statute of limitations would be "extended time and time again; as each class is denied certification, a new named plaintiff could file a class complaint that resuscitates the litigation." *China Agritech*, slip op., at 10. This, the Court said, is a critical reason the *American Pipe* rule should not apply to later-filed class actions: "[t]he time to file individual actions once a class action ends is finite, extended only by the time the class suit was pending; the time for filing successive class suits, if tolling were allowed, could be limitless." *Id.* The Court also rejected the plaintiffs' argument that its refusal to extend *American Pipe* to class actions denied them a substantive right and that their claims should be permitted to proceed as long as they meet the requirements of Federal Rule of Civil Procedure 23, holding that "[p]laintiffs have no

substantive right to bring their claims outside the statute of limitations” and that “nothing in [Rule 23] calls for the revival of class claims if individual claims are tolled.” *Id.* at 12.

The *China Agritech* plaintiffs argued that the Court’s broad ruling could lead to an uptick in filings of class actions as multiple individuals rush to file putative class suits—even when identical actions are already pending—to protect their right to attempt to litigate their claims on a classwide basis in the event certification is denied in already-filed actions making the same claims. *Id.* The Court rejected that notion, observing that multiple circuits had already declined to read *American Pipe* as providing plaintiffs with a right to file class actions after the statute of limitations had expired and had not seen any such increase. *Id.* at 12-13. Moreover, as the Court pointed out, such an increase in filings could actually be a good thing: if multiple putative class actions are filed contemporaneously, district courts could use them to assess the merits of affording class treatment to the claims. *Id.* at 14.

The Court made clear that its holding does not affect the rule it announced in *American Pipe*. Plaintiffs will still be permitted—on an individual basis only—to take advantage of the tolling effect of any class action and may either intervene in an action after a court denies class certification or file their own individual claim. Thus, while *China Agritech* should give companies confidence that they will not have to face newly filed class actions in perpetuity after the statute of limitations has expired, they should remain vigilant and ready to defend individual claims in the wake of an unsuccessful bid for class certification.

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