



U.S. Supreme Court: Plaintiffs May Not Piggyback Successive Class Actions Beyond Statute of Limitations

When does time run out on filing a class action? Under the U.S. Supreme Court's seminal decisions in *American Pipe & Construction Co. v. Utah* and *Crown, Cork & Seal Co. v. Parker*, a timely class complaint tolls the statute of limitations for class members until class certification is denied. At that point, potential class members may file their own suits or intervene in the still-pending action. In a unanimous judgment in *China Agritech, Inc. v. Resh*, the Court, per Justice Ginsburg, resolved a related issue that had divided the lower courts: *American Pipe* tolling does not permit a plaintiff to bring a new class action—rather than pursue an individual claim—after the expiration of the statute of limitations.

This case involves the last of three class actions filed on behalf of purchasers of China Agritech stock alleging violations of the Securities Exchange Act of 1934. While the first two actions were timely, the district court denied class certification in both cases. The plaintiff in the third case attempted to file a class complaint after the statute of limitations had expired.

The Court explained that *American Pipe* and *Crown, Cork & Seal* concerned only putative class members who wish to sue individually after a class-certification denial. In that circumstance, tolling promotes the interests of efficiency and judicial economy, as reflected in Federal Rule of Civil Procedure 23. With competing class claims, by contrast, those same efficiency interests favor early filing so that the district court can choose the best representative plaintiff. And extending *American Pipe* to successive class claims would give plaintiffs limitless bites at the proverbial apple.

Concurring in the judgment, Justice Sotomayor would have decided the question only for cases, like this one, governed by the Private Securities Litigation Reform Act of 1995, which mandates a special process, with special notice requirements, for selecting a lead plaintiff in securities cases. Justice Sotomayor flagged that the Court's ruling may encourage multiple potential class representatives to bring suit early on. That could lead to a race toward settlement or gamesmanship. Justice Ginsburg pointed to evidence that an increase in filings was unlikely and observed that district courts, increasingly familiar with multidistrict litigation, have ample tools to manage such duplicative suits, including stays, consolidation, and transfers. Class actions need to be filed within the statute of limitations, or not at all.



Sarah L. Levine
Washington



N. Scott Fletcher
Houston



Geoffrey J. Ritts
Cleveland



C. Kevin Marshall
Washington

SUBSCRIBE

SUBSCRIBE TO RSS



Jones Day is a global law firm with more than 2,500 lawyers on five continents. We are One Firm WorldwideSM.

Disclaimer: Jones Day's publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.