



June 2018

Follow @Paul_Hastings



A Unanimous Supreme Court Mends the Leaking Pipe of Unending Class Action Filings

By The [Securities Litigation Practice Group](#)

In *China Agritech, Inc. v. Resh et al.*,¹ a unanimous U.S. Supreme Court held that, upon denial of class certification, a putative class member may not initiate an additional class action under the Private Securities Litigation Reform Act of 1995 (“PSLRA”) once the statute of limitations has passed. Under these circumstances, according to the Court, putative members of the previous class are limited to joining existing class litigation or initiating individual actions. By refusing to permit successive class actions beyond the applicable statute of limitations, the Court in *Resh* reversed the Ninth Circuit’s decision to toll the statute of limitations,² and also resolved a split amongst the federal Circuit Courts.³

Grounding its analysis in precedent and principles of judicial economy, the Supreme Court declined to extend its holding from *American Pipe & Constr. Co. v. Utah*,⁴ which established that a timely filed class action tolls the applicable statute of limitations for putative class members. Under *American Pipe*, individual plaintiffs may timely intervene in the still-pending action if class certification is denied or they may bring an individual suit in lieu of intervention after class certification is denied.

A Steady Stream of Class Action Claims Develops

On June 30, 2014, Michael Resh filed a securities class action on behalf of China Agritech’s common stock purchasers. The class action complaint alleged that the company violated the Securities Exchange Act of 1934 (“Exchange Act”). This complaint was the third such action brought by China Agritech’s common stock purchasers alleging Exchange Act violations.

Exchange Act claims are subject to a two-year statute of limitations and a five-year statute of repose. Both Resh and China Agritech agreed that the statute of repose began to run on November 12, 2009, when the alleged fraud occurred. The parties also agreed that the statute of limitations began to run on February 3, 2011, when plaintiffs, under the discovery rule, were sufficiently on notice of the claim. Therefore, the present suit was filed roughly seventeen months after the statute of limitations expired.

Other China Agritech shareholders previously filed class action complaints on February 11, 2011, and October, 4, 2012, each of which fell within the two-year statute of limitations. Consistent with PSLRA requirements, counsel in both of the first two actions posted notice of the action and invited members of the purported class to move to serve as lead plaintiff. Resh did not seek lead plaintiff status in either action. The District Court denied class certification in the first action due to the plaintiffs’ failure to show that China Agritech traded on an efficient market; the District Court denied certification in the second action for lack of typicality and adequacy.



In the instant case, the District Court dismissed Resh’s class complaint as untimely, holding that the first two class complaints did not toll the statute of limitations to allow for the initiation of additional class claims. The Ninth Circuit reversed on policy grounds, holding that extending the *American Pipe* rule would “cause no unfair surprise to defendants” and “would promote economy of litigation by reducing incentives for filing protective class suits” while courts rule on class certification motions.

The Supreme Court Relies on Precedent and Principles of Judicial Economy to Limit *American Pipe* Tolling

The Supreme Court granted *certiorari* to address the developing circuit split regarding the application of *American Pipe* to “otherwise-untimely successive class claims.” Ultimately, the Court held that *American Pipe* does not permit a putative class member to initiate a new class action beyond the applicable statute of limitations.

The Court first looked to its opinions in *American Pipe* and *Crown, Cork & Seal Co. v. Parker*,⁵ which addressed the filing of individual claims following denial of class certification. The Court noted neither decision “so much as hints” that tolling of the statute of limitations extends to time-barred *class* claims.

Second, the Court explored “efficiency and economy of litigation,” determining that those broad principles should encourage prompt filing of class action claims. The Court reasoned that if all potential class representatives come forward earlier, trial courts can decide class certification issues for all potential representatives at the onset of litigation, rather than requiring perpetual litigation every time a new would-be representative comes forward. The Court noted further support in Rule 23 of the Federal Rules of Civil Procedure and in the PSLRA. A former version of Rule 23 encouraged trial courts to rule on class certification “as soon as practicable,” with the most recent version changed to “an early practicable time,” so as to allow more time for courts to conduct preliminary class discovery to find the best representation for the class. Similarly, the PSLRA attempts to bring all potential representatives into the fold at the onset of litigation via its requirement of notice of the commencement of a class action.

Third, the Court examined equitable principles, noting that “[p]laintiffs have no substantive right to bring their claims outside the statute of limitations.” Allowing a plaintiff who has, as in this case, twice failed to assert his opportunity to become a class representative, to bring a subsequent and untimely class action turns the rationale of equitable tolling on its head, since that plaintiff “can hardly qualify as diligent in asserting claims and pursuing relief.” Conversely, plaintiffs who are allowed to pursue individual claims after relying on a class representative, as was the case in *American Pipe*, could not be said to have “slept on their rights.” The Court held that applying the equitable principles underlying *American Pipe* to the instant case 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.”

Lastly, the Court quickly dispensed with the argument that its holding would lead to a dramatic increase in protective class filings. The Court noted that the Second and Fifth Circuits long ago declined to allow successive class claims beyond the statute of limitations, with neither circuit experiencing a disproportionate increase in duplicative findings.

Writing separately, Justice Sotomayor concurred with the majority that *American Pipe* does not extend the statute of limitations period for class action claims under the PSLRA. However, Justice Sotomayor was not willing to extend the Court’s broad holding to other class action claims outside the PSLRA.



Justice Sotomayor emphasized that the lead plaintiff appointment procedures and notice requirements are unique to class action suits under the PSRLA and make the Court's refusal to extend tolling in this statutory context appropriate. However, because putative class members in non-PSLRA claims may be entirely unaware of pending class actions, Justice Sotomayor argued for extending *American Pipe* tolling to non-PSLRA class actions.

Conclusion and Key Takeaways

The Court's decision in *Resh* provides considerable clarity for companies that become embroiled in complex class action litigation, especially in securities litigation. First, by resolving the previous circuit split, the Court minimized the likelihood of future class action forum shopping, as the Sixth and Ninth Circuits may no longer permit class action claims beyond the statute of limitations period. Second, the Court's refusal to allow a potentially endless tolling of the statute of limitations gives class action defendants repose in knowing that they will not be subject to an unending string of stacked class actions claims. Third, the decision in *Resh* may also increase plaintiffs' incentive to file for lead plaintiff status immediately rather than wait for the court's determination as to class certification, thereby making lead plaintiff contests even more competitive. Finally, despite Justice Sotomayor's argument that the Court's holding should be cabined to the PSLRA context, the majority's opinion does not seem so limited. In other words, the Court's refusal to allow subsequent untimely class action claims would seem to extend beyond securities claims and to other class action claims.



¹ 584 U.S. ____ (2018).

² *Resh v. China Agritech, Inc.*, 857 F.3d 994, 1004 (9th Cir. 2017).

³ Compare *Phipps v. Wal-Mart Stores, Inc.*, 792 F.3d 637 (6th Cir. 2015) (tolling the statute of limitations for subsequent class actions), with, e.g., *Basch v. Ground Round, Inc.*, 139 F.3d 6 (1st Cir. 1998) (refusing to allow plaintiffs to stack class action claims indefinitely), *Griffin v. Singletary*, 17 F.3d 356 (11th Cir. 1994) (same), *Salazar-Calderon v. Presidio Valley Farmers Ass'n*, 765 F.2d 1334 (5th Cir. 1985) (same), and *Korwek v. Hunt*, 827 F.2d 874 (2d Cir. 1987) (refusing to extend *American Pipe* to subsequent class actions).

⁴ 414 U.S. 538 (1974).

⁵ 462 U.S. 345 (1983).

Paul Hastings LLP

Stay Current is published solely for the interests of friends and clients of Paul Hastings LLP and should in no way be relied upon or construed as legal advice. The views expressed in this publication reflect those of the authors and not necessarily the views of Paul Hastings. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought. These materials may be considered ATTORNEY ADVERTISING in some jurisdictions. Paul Hastings is a limited liability partnership. Copyright © 2018 Paul Hastings LLP.