

**BLOGS**

Archives;Class Action & Litigation

Class Action Tolling in the Wake of China Agritech The Good and the Bad for Employers

Earlier this month, the U.S. Supreme Court addressed whether, after denial of class certification, a putative class member can file a new class action after the applicable statute of limitations has expired, as opposed to joining an existing case or pursuing an individual lawsuit. The Court held, in *China Agritech*, that this is not allowed, creating potentially significant ramifications for employers. Had the Court ruled the other way, claimants who were unsuccessful in obtaining class certification might have had the ability to perpetually file new class actions, one after the other, in a never ending effort to obtain class certification.

Background on Class Action Tolling

Prior to its *China Agritech* ruling, the Supreme Court held in 1974 that the filing of a putative class action tolls the statute of limitations for all members of the putative class on class claims currently pending in the proposed class action case. See *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974). The purpose of the Courts *American Pipe* rule was to promote efficiency in the class action context. If the statute of limitations on claims continued to run while the putative class action proceeded, putative class members would be put in a bind. On the one hand, they could move to join in the case before the trial courts class certification decision, but this would flood the court with motions that might prove unnecessary if the court ultimately certified the class. On the other hand, if putative class members waited to try to join the case and a class was not certified, the potential claimants could risk missing their chance to pursue their claims due to the expiration of the statute of limitations before a certification ruling. Hitting pause on the statute of limitations pending the outcome of a class certification motion allowed this dilemma to be averted.

In 1983, the Supreme Court expanded the *American Pipe* tolling rule to putative class members who wanted to file their own individual lawsuits after denial of class certification in the firstfiled case. See *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983). Against this backdrop, the *China Agritech* case posed a new questionnamely, did the *American Pipe* tolling rule allow a plaintiff to file a new class action after denial of class certification in an earlierfiled case and the expiration of the statute of limitations? The Supreme Court ruled in the negative.

The Supreme Courts Holding

In its majority opinion, which was authored by Justice Ginsburg, the Court held that *American Pipe* does not permit a plaintiff who waits out the statute of limitations to piggyback onto an earlier, timely filed class action. Instead, individuals who want to pursue class actions for the same claims against the same defendant(s) must do so early on, soon after the commencement of the first action seeking class certification. The Supreme Court based its holding on several key points:

1. In the class action context, efficiency favors early assertion of competing class representative claims.



2. To get the benefit of the *American Pipe* tolling rule, a plaintiff must demonstrate he or she acted diligently and did not sit on his or her laurels. A potential class representative who waits to file a putative class action until after the expiration of the limitations period has not acted diligently.
3. Finally, applying the tolling rule to subsequent putative class actions filed after the statute of limitations has expired could result in a never-ending succession of class suits aimed at getting multiple bites at the class certification apple.

Good News and Bad News for Employers

No doubt, *China Agritech* is a victory for employers. There is now a definitive rule from the highest court of the United States that prohibits putative class members from relying on the *American Pipe* tolling rule to permit an otherwise untimely class action lawsuit. This means that once the applicable statute of limitations expires, employers who prevail on a class certification motion can rest easy, knowing putative class members cannot start a new class or individual action based on the time-barred claims.

However, what about all of the potential plaintiffs who previously chose not to file a copycat class action against an employer, believing they could wait for the outcome of a class certification motion in a pending case? As Justice Ginsburg wrote, those potential claimants now must file their cases early on, soon after the commencement of the first action seeking class certification. *China Agritech, Inc. v. Resh, et al.*, No. 14-432 at *6 (June 11, 2018). The result could be more putative class actions filed in close proximity, each jockeying to be the lead case so that would-be class action claimants do not risk losing the right to their day in court. This, of course, would not be good news for employers given the considerable expense and time associated with class actions. This potential outcome may be one more reason for employers to consider implementing arbitration agreements with employees that include class action waivers. While arbitration agreements have pros and cons, class action waivers are a big pro and recently were upheld as valid by the Supreme Court in its May 2018 *Epic Systems* ruling.