

# One Minute Memo®



## Limiting Class Action Tolling: Supreme Court Rules That Filing A Class Action Does Not Toll The Limitations Period for Successive Class Actions

By Esther Slater McDonald and Jonah Hecht

**Seyfarth Synopsis:** In [China Agritech, Inc. v. Resh](#), the Supreme Court earlier this month held that pending class actions do not toll the limitations period for successive class actions. The ruling limits plaintiffs' ability to bring successive class actions and will increase certainty for defendants sued in class actions.

### Background

The Supreme Court had previously held that the timely filing of a class action tolls the applicable statute of limitations for all persons encompassed in the class complaint. Thus, where class certification is denied, members of the failed class could timely intervene as individual plaintiffs or promptly bring individual actions, even if the limitations period had expired. See *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974); *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983).

In *China Agritech*, the Court clarified that such tolling applies only to individual actions, not successive class actions. Therefore, upon denial of class certification, a putative class member cannot commence a new class action if the limitations period has expired.

### The *China Agritech* Litigation

In *China Agritech*, a China Agritech shareholder timely brought a class action alleging that China Agritech violated the federal securities laws. The district court denied the plaintiff's motion for class certification, and the action settled. Subsequently, another China Agritech shareholder brought a class action alleging securities law violations. The district court again denied a motion for class certification, and the action settled.

After the second settlement, shareholder Michael Resh brought a class action against China Agritech for violation of the federal securities laws. Resh filed his lawsuit outside the applicable limitations period, but he argued that the limitations period was tolled under the Supreme Court's decision in *American Pipe*.

Justice Ginsburg, writing for the Court, explained that the "efficiency and economy of litigation" referenced in *American Pipe* supports tolling individual claims but not successive class actions. The Court explained that efficiency favors early assertion of

competing class representative claims. If class treatment is appropriate, and all would-be representatives have come forward, the district court can select the best-named plaintiff with knowledge of the full array of potential class representatives and class counsel. On the other hand, if the class mechanism is not a viable option, class certification can be litigated at the outset of the case, and that determination made once for all would-be class representatives.

The Court noted that a contrary ruling would allow the statute of limitations to be extended time and again: each time class certification was denied, a new-named plaintiff could try to resuscitate the litigation by filing a successive class action.

Thus, the Court instructed that “any additional *class* filings should be made early on, soon after the commencement of the first action seeking class certification” (emphasis in original).

It might appear that this directive will result in more claims being filed by competing plaintiffs early in the case, each seeking to become the named plaintiff. However, the Supreme Court suggested in *China Agritech* that there was little evidence that such an increase occurred in those circuits that had already declined to apply *American Pipe* to successive class actions.

All but Justice Sotomayor joined the opinion. She concurred in the judgment but would have limited the ruling to class action claims under the Private Securities Litigation Reform Act.

## Takeaway

Plaintiffs can no longer file successive class actions after the expiration of the limitations period. A defendant who defeats class certification no longer has to worry about new class actions being filed after the expiration of the limitations period.

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