



Supreme Court Rejects Tolling Of Statute Of Limitations For Successive Class Actions

China Agritech Inc. v. Resh,
No. 17-432

Decided June 11, 2018

Today, the Supreme Court held that the filing of a class action does not toll the statute of limitations for putative class members to file their own class actions. That means that if class certification is denied, putative class members cannot file successive class actions after the statute of limitations has expired.

Background:

Stockholders filed two timely class actions against China Agritech, Inc. alleging that the company violated the Securities Exchange Act of 1934. After class certification was denied in both actions, stockholders filed a third class action, well outside the two-year limitations period. They argued that their claims were timely because the limitations period was tolled while the earlier class actions were pending.

Issue:

Whether previously absent class members may bring a class action outside the applicable limitations period on the theory that the pendency of a previous class action (in which the court ultimately denied class certification) tolled the statute of limitations during the pendency of earlier class actions.

Court's Holding:

No. Previously absent class members may not bring successive (also called “stacked”) class actions outside the limitations period.

“The ‘efficiency and economy of litigation’ that support tolling individual claims, . . . do not support maintenance of untimely successive class actions; any additional class filings should be made early on, soon after the commencement of the first action seeking class certification.”

Justice Ginsburg,
writing for the Court

Gibson Dunn filed amicus briefs arguing against tolling for successive class actions for the Chamber of Commerce, Retail Litigation Center, and the American Tort Reform Association

What It Means:

- The Court declined to extend the equitable tolling rule established in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974), which permits putative class members to wait for a decision on class certification before filing an *individual* claim or intervening in the original lawsuit. The Court held that the *American Pipe* rule does not toll the statute of limitations for putative class members to file *class* actions, so all class claims must be filed within the limitations period.
- The ruling ensures that when class certification is denied, a new plaintiff cannot revive otherwise expired claims by filing the case as a class action. The Court explained that the decision about whether to certify a class should be made at the outset of the case for all would-be class representatives, and class members should not be able to extend the statute of limitations indefinitely by filing successive class actions each time class certification is denied.
- The Court made clear that its ruling applies regardless of the reason the court denied class certification in the first case.
- The Court stated that its ruling is not likely to lead to a dramatic increase in the number of protective class actions filed during the limitations period. The majority of courts of appeals had already adopted the same rule, and those courts did not experience an increase in protective class action filings.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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