



## Supreme Court Holds That The Deadline For Filing Petitions For Permission To Appeal Class Certification Orders Is Not Subject To Equitable Tolling

***Nutraceutical Corp. v. Lambert*, No. 17-1094** Decided February 26, 2019

Today, the Supreme Court held 9-0 that Federal Rule of Civil Procedure 23(f)'s 14-day deadline for filing a petition for permission to appeal an order granting or denying class certification is not subject to equitable tolling.

### Background:

Federal Rule of Civil Procedure 23(f) imposes a 14-day deadline to petition for permission to appeal from an order granting or denying class certification. After a district court decertified a class, plaintiff was granted 20 days in which to file a motion for reconsideration. Plaintiff timely filed the motion 20 days after issuance of the decertification order, which the court denied three months later. Plaintiff then filed a Rule 23(f) petition for permission to appeal 14 days after the denial of reconsideration. The Ninth Circuit granted the petition, holding that Rule 23(f)'s deadline was not jurisdictional and that equitable circumstances may warrant tolling the Rule 23(f) deadline, including where a plaintiff timely informs the district court of his intention to file a reconsideration motion before the Rule 23(f) deadline has lapsed.

### Issue:

Whether Federal Rule of Civil Procedure 23(f)'s 14-day deadline to file a petition for permission to appeal an order granting or denying class-action certification is subject to equitable tolling.

### Court's Holding:

No. Rule 23(f)'s 14-day deadline is not subject to equitable tolling.

*"The Rules . . . express a clear intent to compel rigorous enforcement of Rule 23(f)'s deadline, even where good cause for equitable tolling might otherwise exist."*

Justice Sotomayor,  
writing for the unanimous Court

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## What It Means:

- The Court's ruling means that a court may not forgive a party's failure to file a petition for permission to appeal within Rule 23(f)'s 14-day window. Although this case arose in the context of a plaintiff's petition for permission to appeal an order *denying* class certification, it applies with equal force to petitions filed by defendants seeking to appeal orders *granting* class certification. It is therefore imperative that petitions for permission to appeal are filed within Rule 23(f)'s 14-day window.
- The Court focused on the text of Federal Rule of Appellate Procedure 5(a)(2), which provides that a petition for permission to appeal "must be filed within the time specified," and Federal Rule of Appellate Procedure 26(b), which states that a court of appeals "may not extend the time to file . . . a petition for permission to appeal."
- The Court's decision makes clear that whether other rules are subject to equitable tolling will depend on whether the pertinent rule or rules "show a clear intent to preclude tolling," and not on whether the rule is jurisdictional in nature.
- Two questions remain open after the Court's decision. First, the Court did not address whether a motion for reconsideration filed *before* Rule 23(f)'s 14-day deadline has elapsed may reset the clock. Second, the Court did not consider whether an order denying reconsideration may itself be appealable under Rule 23(f).

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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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