

## Institutional Investors Must Remain Vigilant of Limitations Deadlines in the Wake of the Supreme Court's Holding in *China Agritech v. Resh*

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The U.S. Supreme Court granted certiorari in [China Agritech Inc. v. Resh](#), to determine whether “[u]pon denial of class certification, may a putative class member, in lieu of promptly joining an existing suit or promptly filing an individual action, commence a class action anew beyond the time allowed by the applicable statute of limitations.” On Monday, [the Court decided that the answer is no](#), holding that “[American Pipe](#) tolls the statute of limitations during the pendency of a putative class action, allowing unnamed class members to join the action individually or file individual claims if the class fails,” but “does not permit the maintenance of a follow-on class action past expiration of the statute of limitations.” As with the court’s decision in [ANZ Securities](#) last term, this decision highlights the need for institutional investors to closely monitor the statutes of limitations and repose applicable to securities fraud cases involving issuers in which they have made significant purchases during the putative class period.

### **Background**

This case involves three successive class action complaints that each made materially identical allegations, claiming that the defendant violated the [Securities Exchange Act of 1934](#) by misstating revenue and income related to its subsidiaries’ purported fertilizer business. In the first class action, the court denied the plaintiff’s motion for class certification and the defendant subsequently settled with the individual plaintiff. A second plaintiff brought a second class action, which the court dismissed on procedural grounds. A new named plaintiff, who had been a putative class member in the two prior suits, then filed a new class action (the “Third Class Action”) more than two years after discovering the facts constituting the alleged fraud.

The defendant moved to dismiss the Third Class Action, arguing that the class action was time-barred under the [Exchange Act’s two-year statute of limitations](#). The plaintiff claimed, however, that the two earlier lawsuits had tolled the limitations period. The district court disagreed, finding that, while the earlier action tolled the statute for class members’ individual claims, it did not toll the time for a subsequent class action. The district court granted defendants’ motions to dismiss and subsequently denied reconsideration.

[The Ninth Circuit held](#) that the absent class members, whose [individual](#) claims were tolled under *American Pipe*, were also not time-barred from bringing a related putative [class action](#) after the Court denied class certification in the initial case. The Ninth Circuit determined that while Supreme Court’s decisions in [American Pipe](#) and [Crown, Cork & Seal Co.](#), had held that putative class members’ [individual](#) claims are tolled by the filing of a class action, those decision did not address whether class members could timely bring an [entirely new class action](#). In analyzing that question, the Ninth Circuit determined that issue preclusion principles determined the viability of a successive class action, and that *American Pipe* tolling tolled the limitations period for both subsequent individual actions and class actions.



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The Ninth Circuit joined the Sixth and Seventh Circuits in concluding that *American Pipe* tolling applies to subsequently filed class actions. See [Phipps v. Wal-Mart Stores, Inc.](#); [Sawyer v. Atlas Heating & Sheet Metal Works, Inc.](#) In contrast, the First, Second, Fifth, and Eleventh Circuits had rejected the application of *American Pipe* tolling to subsequently filed class actions, reasoning that *American Pipe* tolling is not intended to permit serial re-litigation of class certification and indefinite extensions of statutes of limitations. See [Basch v. Ground Round, Inc.](#); [Korwek v. Hunt](#); [Salazar-Calderon v. Presidio Valley Farmers Ass'n](#); [Griffin v. Singletary](#). In between these two positions, the Third and Eighth Circuits had held that *American Pipe* tolling can apply to subsequent class actions in certain circumstances, namely, “where class certification has been denied solely on the basis of the lead plaintiffs’ deficiencies as class representatives, and not because of the suitability of the claims for class treatment.” See [Yang v. Odom](#); [Great Plains Tr. Co. v. Union Pac. R.R. Co.](#)

## **The Supreme Court’s Holding**

The Supreme Court reversed the Ninth Circuit, and held that *American Pipe* tolling does not apply to subsequently filed class actions. The court began its analysis by noting that *American Pipe* and *Crown, Cork* “addressed only putative class members who wish to sue individually after a class-certification denial.” It then concluded that the policies favoring “efficiency and economy of litigation” that support tolling of individual claims under *American Pipe*, do not support maintenance of untimely successive class actions.

The Court embraced the idea that a “multiplicity of class-action filings” has certain benefits. According to the court, with class claims, “efficiency favors early assertion of competing class representative claims.” This is because multiple early class filings “may aid a district court in determining, early on, whether class treatment is warranted, and if so, which of the contenders would be the best representative.” The Court also noted that a “plaintiff who seeks to preserve the ability to lead the class—whether because her claim is too small to make an individual suit worthwhile or because of an attendant financial benefit—has every reason to file a class action early, and little reason to wait in the wings, giving another plaintiff first shot at representation.”

The Court further held that the rule adopted by the Ninth, Sixth and Seventh Circuits did not lead to economy of litigation. For individual claims, the court noted that “economy of litigation favors delaying those claims until after a class-certification denial” and that the “time to file individual actions once a class action ends is finite, extended only by the time the class suit was pending.” But, according to the court, allowing the limitations to be tolled with respect to successive class suits 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.” The court concluded that if tolling applied to successive class claims, the limitation period “could be limitless.”

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