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American Pipe Clarified: Statute of Limitations for Class Actions not tolled by a Prior Motion for Class Certification

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By: Concepcion A. Montoya

In a unanimous decision, the United States Supreme Court held on June 11, 2018 that a pending motion for class certification does not toll the statute of limitations for the filing of a new class action lawsuit by a putative class member. Writing for the majority in *China Agritech, Inc. v. Resh*, Justice Ruth Bader Ginsburg repeatedly emphasized that the "efficiency and economy of litigation" is not promoted by allowing less than diligent plaintiffs to file a new, but time-barred, class action lawsuit. Clarifying the Court's prior holding in *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974), Justice Ginsburg wrote that "[e]ndless tolling is not the result envisioned by *American Pipe*."

American Pipe tolled the statute of limitations for individuals who wished to intervene in a class action lawsuit upon the denial of class certification. The later decision of *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983), expanded that protection and allowed the filing of a new and separate individual lawsuit if the class certification motion is denied. Over the years, a split developed among the Circuits regarding the issue of whether a new class action lawsuit may be filed if the class certification of a prior similar suit is denied. The Sixth and Ninth Circuits allowed the stacking of class actions by extending such tolling, but, the First, Second, Third, Fifth and Eleventh Circuits declined to extend the tolling period.

In *China Agritech*, Respondent Resh instituted a class action lawsuit past the expiration of the applicable statute of limitations, alleging violations of the Securities Exchange Act of 1934. Before Resh's lawsuit, two other class actions based on similar claims were filed and settled after the denial of class certification. The district court dismissed Resh's lawsuit as untimely, but, the Ninth Circuit reversed on appeal on the grounds that allowing the new class action to proceed caused no unfair surprise to defendants and reduced "incentives for filing protective class suits during the pendency of an initial certification motion." *Id*. at *4.

Although the United States Supreme Court shared the same policy concerns, it reversed the Ninth Circuit. The Supreme Court noted that district courts are provided with numerous tools to handle multiple filings, including

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stays, consolidations or transfers. Moreover, there is no substantive right to time-barred claims and, thus, the Court noted that its holding is consistent with the Rules Enabling Act.

In a concurring opinion, Justice Sotomayor raised the possibility of extending the toll when a class certification denial is based on the deficiencies of the lead plaintiff rather than a deficiency in the class itself. Justice Ginsburg addressed that concern squarely by stating that Rule 23 makes no such distinction and the deficiencies of a lead plaintiff or class counsel must be discovered and acted upon early on in the litigation.

In conclusion, this decision may result in a more efficient oversight by the courts in class action lawsuits and possibly curtail frivolous class action claims.

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