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Securities Fraud Class Action Claim Tolling Refined: *China Agritech v. Resh*

by Marissa Parker and Kyle A. Jacobsen

Following the U.S. Supreme Court's decision last year in *CalPERS*,¹ which clarified that statutes of repose are not subject to equitable tolling under *American Pipe*,² the Court's recent ruling in *China Agritech v. Resh*³ (https://www.supremecourt.gov/opinions/17pdf/17-432_08m1.pdf) provides complementary assurance that a class action filing does not toll the statute of limitations period for a successive putative class in the event that certification is denied. The decision resolves a split among federal appellate courts and establishes that the Court's progeny from *American Pipe* to *Crown, Cork*⁴ limits the tolling of the applicable statute of limitations period to direct action claims by individual investors otherwise encompassed by the class complaint, but not to subsequent class filers.

By way of background, *China Agritech, Inc. v. Resh* was the third putative class action filed by purchasers of China Agritech's common stock. The shareholders alleged materially identical violations of the Securities Exchange Act of 1934. The Act has both a two-year statute of limitations (triggered upon discovery of the violation) and a five-year statute of repose. The district court denied class certification in the first two cases, both of which ultimately settled. A new group of shareholders then filed a third class complaint approximately a year-and-a-half after the statute of limitations expired. They claimed the complaint was timely because the limitations period was tolled while the earlier putative class cases were pending (i.e., from commencement until denial of certification). The district court disagreed and dismissed the complaint as untimely, whereas the Ninth Circuit Court of Appeals reversed, holding that *American Pipe* extends to successive class claims as well. The U.S. Supreme Court disagreed, and reversed the Ninth Circuit.

The Supreme Court stressed that *American Pipe* and *Crown, Cork* only addressed putative class members who wished to sue individually after a class certification denial, as distinguished from *China Agritech*, which involved another putative class. Relying on *American Pipe*, the Court emphasized that the "efficiency and economy of litigation" that supports tolling for individuals is unwarranted where the successive complaint represents a putative class; the rationale being that the Private Securities Litigation Reform Act (PSLRA), which governed the dispute, and Federal Rule of Civil Procedure 23 both "evinced a preference" to address class issues and certification "early on" in litigation. To that end, the Court declared that *American Pipe* simply did not contemplate "endless tolling" of the limitations period for subsequent putative classes.

China Agritech draws an important line for all class action litigants. By preserving *American Pipe* and *Crown, Cork*'s collective holdings that the timely filing of a putative class action tolls the limitations period for all **individual** investors during the pendency of class proceedings, those investors retain the ability to pursue their direct claims in a timely

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manner in the event of a denial of class certification. Equally, defendants have definitive protection against successive **classes**, which are not subject to the same treatment, making resolution of class issues – and in particular, certification – all the more critical.

¹ *California Public Employees' Retirement System v. ANZ Securities, Inc.*, 137 S. Ct. 2042 (2017). See also Securities Litigation & Enforcement Alert, "Following CalPERS v. ANZ Securities, the Third Circuit Confirms No Equitable Tolling of Exchange Act's Statute of Repose" (<https://www.stradley.com/insights/publications/2017/08/securities-lit-and-enforcement-august-31-2017>) (August 31, 2017).

² *American Pipe & Const. Co. v. Utah*, 414 U.S. 538 (1974).

³ No. 17-432, 2018 WL 2767565 (U.S. June 11, 2018).

⁴ *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983). Together, *American Pipe* and *Crown, Cork* establish that the timely filing of a class action complaint tolls the applicable statute of limitation for all individuals encompassed by the class complaint.



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