

Supreme Court Limits Class Action Tolling, Reducing the Ability of Plaintiffs to File Successive Class Actions for the Same Claims

by James J. Boland

A FREEBORN & PETERS LLP CLIENT ALERT

ABOUT THIS CLIENT ALERT:

This Client Alert addresses the United States Supreme Court's decision in *China Agritech, Inc. v. Resh*. *China Agritech* clarifies the doctrine known as class action tolling, under which the statute of limitations for individual claims of absent class members are tolled when a class action is filed until class certification is denied. The decision is significant because it limits the time for class action suits to be filed asserting the same claims, and prevents plaintiffs from extending the limitation period by filing serial class actions until a favorable decision on class certification is obtained.

On June 11, 2018, the United States Supreme Court held that the rule that tolls the statute of limitations for the claims of individual class members when a class action is filed applies only to class members' individual claims, not to successive class actions. *China Agritech, Inc. v. Resh*, 584 U.S. --- (2018).



In *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974), the United States Supreme Court held that the filing of a class action tolls the running of the statute of unnamed class members who choose to intervene in the lawsuit after the court decides that class certification is inappropriate. In *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983), the Court clarified that this rule, commonly known as “class action tolling” or “*American Pipe* tolling”, also applies to class members who choose to file individual suits, rather than intervene, after the denial of class certification.

In the years following *American Pipe* and *Crown, Cork*, courts had reached different conclusions about whether a plaintiff could rely on class action tolling to assert otherwise untimely claims in a class action, rather than individually. *China Agritech* was just such a case. In *China Agritech*, the plaintiffs, whose individual claims were tolled as a result of two timely prior class actions in which certification was denied, attempted to rely on that tolling to file a third class action after the statute of limitations had run.

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James J. Boland is a Partner focusing on complex commercial litigation and domestic and international arbitration. Mr. Boland has extensive experience and has represented a variety of corporations, businesses and professional firms in matters involving reinsurance (life & health, property & casualty), antitrust, securities fraud, accountant liability, consumer protection, shareholder and derivative disputes, mergers and acquisitions disputes, including post-closing disputes, and a variety of other commercial matters.

Reversing the court of appeals, the Supreme Court held that class action tolling applies to individual claims only, not to class claims.

China Agritech resolves an unanswered question about the scope of class action tolling and effectively serves to stop the filing of repeated class actions beyond the limitations period. As the Court recognized, to hold otherwise would allow the statute of limitations to be extended indefinitely, with new plaintiffs filing class action complaints each time certification is denied until a court is found that will certify the class. Under *China Agritech*, that will no longer be possible and limitations periods will have greater force.

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