

Inside the Courts An Update From Skadden Securities Litigators

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

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Supreme Court Rules That Pending Class Actions Do Not Toll Limitations Period for Subsequent Class Actions

In *China Agritech v. Resh*, No. 17-432 (June 11, 2018), the U.S. Supreme Court held today that a pending class action does not toll the statute of limitations for absent class members who bring a subsequent class action. The Supreme Court thereby declined to extend its holdings in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974), and *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983), in which the Court concluded that a timely filed class action tolls the statute of limitations for absent class members who file subsequent individual claims.

China Agritech involved the third of three successive and substantially similar putative class actions alleging that the petitioner, a manufacturer of organic fertilizer, engaged in securities fraud in violation of the Securities Exchange Act. The district court had denied class certification in the prior two actions for failure to satisfy certain requirements of Federal Rule of Civil Procedure 23. The respondents — absent class members of the first two putative classes — then filed a third class action outside of the two-year statute of limitations applicable to Exchange Act claims. After the district court dismissed the respondents' action as time-barred, the U.S. Court of Appeals for the Ninth Circuit reversed. The Ninth Circuit held that the equitable tolling doctrine recognized by the Supreme Court in *American Pipe* and *Crown, Cork* applied to both individual claims and class actions.

The Supreme Court reversed, holding that “*American Pipe* does not permit the maintenance of a follow-on class action past expiration of the statute of limitations.” The Court reasoned that the efficiencies that support tolling of individual claims do not also support tolling of class actions, as efficiency favors early assertion of competing class claims. The Court further noted that diligence is generally a prerequisite to equitable tolling and suggested that a class member who waits until the expiration of the limitations period to file a class action has not acted diligently.

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