

ALERTS

U.S. Supreme Court Limits Potential For Repeat Class Actions

June 13, 2018 | [Atlanta](#) | [Chicago](#) | [Columbus](#) | [Dallas](#) | [Delaware](#) | [Elkhart](#) | [Fort Wayne](#) | [Grand Rapids](#) | [Indianapolis](#) | [Los Angeles](#) | [Minneapolis](#) | [New York](#) | [San Diego](#) | [South Bend](#)

In a unanimous opinion handed down this week, the U.S. Supreme Court provided needed protection against the specter of successive class action lawsuits. In *China Agritech v. Resh*, the court held that the mere filing of a case labeled as a class action does not “toll” or pause the statute of limitations for future class actions addressing the same claims. The court’s opinion holds that if the statute of limitations expires while a class action case is pending, a member of the class may not assert a second class action of the time-barred claim even if the court in the first case denies class action status.

The court had previously held that the filing of a class action lawsuit tolls the statute of limitations period for claims brought by individuals in the event the court denies a motion to certify a class action. This holding protected individuals from the statute of limitations in the event an attempt at a class action ultimately failed. It allowed individuals to hold off suing on their own claims until it the courts could determine whether there was going to be a class action

Writing for a unanimous Supreme Court, Justice Ginsburg refused to extend that logic to future class actions (as opposed individual claims.) The opinion concluded that “the ‘efficiency and economy of litigation’ that support tolling of individual claims . . . do not support maintenance of untimely successive class actions.” As the court explained, “there is little reason to allow plaintiffs who passed up opportunities to participate in the first (and second) round of class litigation to enter the fray several years after class proceedings first commenced.”

Under this holding, if the limitations period for a claim expires while a case remains pending, the class members cannot bring a second class action lawsuit asserting the claim even if the first court refused to certify the case as a class action. Instead, the limitations period forever bars hearing the claim as a class action.

The facts of the *China Agritech* opinion illustrate the danger a contrary result would pose. The lawsuit is the third separate class action asserting the same allegation that a company’s misfeasance had injured its stock price. A federal court refused to grant class certification after a group of plaintiffs sued in 2011. A second lawsuit followed in 2012, but the courts again denied class certification. The same lawyers then filed a third class action complaint in 2014. The Supreme Court held that enough was enough and barred further class litigation of the claim.

Justice Sotomayor wrote separately to suggest that the court’s holding

RELATED PEOPLE**Brian E. Casey**

Partner
South Bend

P 574-237-1285
F 574-237-1125
brian.casey@btlaw.com

**Mark J. Crandley**

Partner
Indianapolis

P 317-261-7924
F 317-231-7433
mark.crandley@btlaw.com

**L. Rachel Lerman**

Partner
Los Angeles

P 310-284-3871
F 310-284-3894
rachel.lerman@btlaw.com

**Peter J. Rusthoven**

Partner
Indianapolis

P 317-231-7299
F 317-231-7433
peter.rusthoven@btlaw.com

should be limited to actions under federal securities law. No other justice joined her opinion.

For more information, please contact the Barnes & Thornburg lawyer with whom you work or the co-chairs of the Appeals and Critical Motions Practice Group, Brian Casey at 574-237-1285 or brian.casey@btlaw.com; Mark Crandley at 317-261-7924 or mark.crandley@btlaw.com; Rachel Lerman at 310-284-3871 or rachel.lerman@btlaw.com; or Peter Rusthoven at 317-231- 7299 or peter.rusthoven@btlaw.com.

© 2018 Barnes & Thornburg LLP. All Rights Reserved. This page, and all information on it, is proprietary and the property of Barnes & Thornburg LLP. It may not be reproduced, in any form, without the express written consent of Barnes & Thornburg LLP.

This Barnes & Thornburg LLP publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer on any specific legal questions you may have concerning your situation.

Visit us online at www.btlaw.com and follow us on Twitter [@BTLawNews](https://twitter.com/BTLawNews).