



## Supreme Court Ruling Reinforces Need for Investors to Protect Rights in Pending Securities Litigation



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**Potential lead plaintiffs must “[j]oin the action individually or file individual claims if the class action fails.” US Supreme Court Justice Ruth Bader Ginsburg, *China Agritech, Inc. v. Michael H. Resh, et al.***

On June 11, 2018, the United States Supreme Court issued a highly anticipated decision in *China Agritech, Inc. v. Michael H. Resh, et al.* Wolf Haldenstein partners [Matthew M. Guiney](#) and [Betsy Manifold](#) represented the plaintiffs/respondents, having commenced the action on behalf of aggrieved shareholders of *China Agritech* after two prior cases had failed at the class certification stage. After the district court dismissed the case as time-barred, attorneys at Wolf Haldenstein argued and achieved a reversal victory at the Ninth Circuit. Wolf Haldenstein subsequently vigorously litigated the matter at the U.S. Supreme Court, but the Court reversed the Ninth Circuit’s decision. Along with the Court’s opinion in *California Public Employees’ Retirement System v. ANZ Securities Inc.*, Slip op., No. 16-373 (June 26, 2017) issued last term, the Court’s *China Agritech* opinion clarifies the steps that investors must take in order to protect their rights when faced with shareholder losses in publicly traded companies.

### **Investors Encouraged to File Protective Class Actions**

In response to the Supreme Court’s decision in *China Agritech*, investors are now encouraged and incentivized to file protective class actions and/or to intervene as soon as practicable in pending class actions in order to be named the lead plaintiff or co-lead plaintiff. Such actions are strongly advised to

preserve the timeliness of investor claims, especially in light of the potential that the initial filing plaintiff might later be found to be an inadequate representative of the class.

### **Legal History Leading up to the Decision**

In 1974, in the now well-known *American Pipe* case, the Supreme Court held that the commencement of a class action tolls the running of the statute of limitations for all purported members of a class that make timely motions to intervene after a denial of class certification. 414 U.S., at 553. This doctrine, known as *American Pipe* tolling, was designed to promote efficiency by removing the need for individual class members “to file protective motions to intervene or to join in the event that a class was later found unsuitable.” *Id.* The Supreme Court followed *American Pipe* with a subsequent ruling in *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983) that clarified the tolling rule and held that the rule applies not only to those who move to intervene, but also to class members filing subsequent individual claims, thus avoiding “a needless multiplicity of actions” by class members seeking to preserve their claims. *Id.* at 351. But *American Pipe* and *Crown, Cork* only addressed whether **individual** claims of putative class members were tolled. The Courts of Appeal had since split on whether *American Pipe* tolling applied to untimely **class actions** brought subsequent to denial of class certification.

### **The Supreme Court’s Decision**

The Supreme Court considered the open question in *China Agritech*. Specifically, the Court considered the following question: upon denial of class certification, may a putative class member, in lieu of promptly joining an existing suit or promptly filing an individual action, commence a class action anew beyond the time allowed by the applicable statute of limitations? The Supreme Court answered the question in the negative. The Court explained and clarified that *American Pipe* tolls the statute of limitations during the pendency of a putative class action, allowing unnamed class members to join the action individually or file individual claims if the class fails. **But *American Pipe* does not permit the maintenance of a follow-on class action past expiration of the statute of limitations.**

The Court based its holding on the notion that “efficiency favors early assertion of competing class representative claims” so that the district court can select the best plaintiff to serve as class representative. In this way, the Court explained that “any additional class filings should be made early on, soon after the commencement of the first action seeking class certification.” *China Agritech*, No. 17-43, slip op. 6-7. The Court further explained that Fed. R. Civ. P. 23, which applies to class actions, encourages requests for class certification sooner rather than later, and that district courts have sufficient mechanisms to allow them to manage multiple proposed class plaintiffs. *Id.* at 14. The opposite result—permitting tolling for successive class claims—“would allow the statute of limitations to be extended time and again; as each class is denied certification, a new named plaintiff could file a class complaint that resuscitates the litigation[,]” essentially creating a risk that plaintiffs’ lawyers could extend a statute of limitations almost indefinitely until they found a court willing to certify a class. *Id.* at 10. Justice Sotomayor’s concurrence joined in the result, although she noted that she would have limited the decision to class actions arising under the Private Securities Litigation Reform Act—which governed the underlying case in *China Agritech*—and not all class actions, (*i.e.*, antitrust and consumer class actions).

### **Practical Implications of *China Agritech***

At this early stage, it is impossible to describe the full implications of *China Agritech* (and *ANZ*) in subsequent cases. Nevertheless, it is virtually certain that as a consequence of the Court's decision in *China Agritech*, parties are now encouraged and incentivized to file protective class actions and/or to intervene as soon as practicable in pending class actions in order to be named the lead plaintiff or co-lead plaintiff and to preserve the timeliness of their claims, especially in light of the potential that the initial filing plaintiff might later be found to be an inadequate representative of the class. Judge Ginsburg, writing for the Court, explained that potential lead plaintiffs in class actions must "[j]oin the action individually or file individual claims if the class action fails." While the precise mechanics may be open to debate, investors undoubtedly need to closely monitor class actions that they are a part of to ensure that their interests are being protected. Investors must consider whether it is in their interest to file a successive class action before the statute of limitations clock runs out, whether to file an individual opt-out action, whether to intervene in an existing case, or to take other appropriate steps. In short, *China Agritech* counsels additional attention on the statute of limitations and consideration of the appropriate steps necessary to protect investors' interests.

Wolf Haldenstein would welcome the opportunity to discuss the implications of this case with you, especially in light of our unique perspective as counsel of record in the case and by virtue of our lead role in the case, from commencement of the action at the District Court through co-counsel role at oral arguments at the Supreme Court.