

# Class Action Stacking Is Not Permitted, U.S. Supreme Court Rules

By Stephanie L. Adler-Paindiris, David R. Golder & Eric R. Magnus

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## Meet the Authors



### Stephanie L. Adler-Paindiris

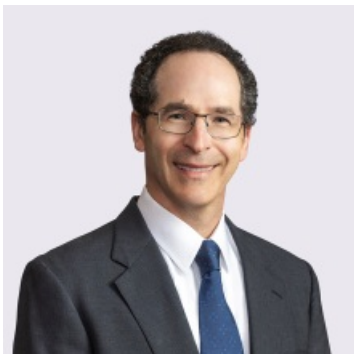
(Pain-DEAR-is • She/Her)

Principal

(407) 246-8409

Stephanie.Adler-

Paindiris@jacksonlewis.com

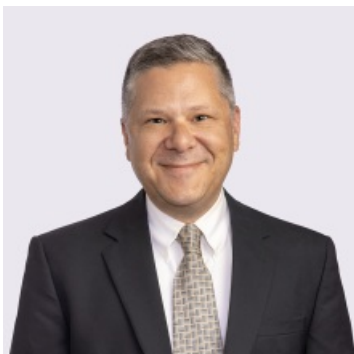


### David R. Golder

Principal

(860) 522-0404

David.Golder@jacksonlewis.com



Once class action certification has been denied, a putative class member may not start a new class action beyond the applicable statute of limitations, the U.S. Supreme Court has ruled, 9-0, in an opinion by Justice Ruth Bader Ginsburg. *China Agritech, Inc. v. Resh*, No. 17-432 (June 11, 2018). Justice Sonia Sotomayor filed an opinion concurring in the judgment.

In 1974, the Court held in *American Pipe and Construction Co. v. Utah* that “the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action.” 414 U.S. 538, 554. Noting that “[t]he watchwords of *American Pipe* are efficiency and economy of litigation,” the Court concluded in *China Agritech* that “*American Pipe* does not permit the maintenance of a follow-on class action past expiration of the statute of limitations.” The *American Pipe* equitable tolling rule does not apply to individual claimants banding together and filing a subsequent (“stacked”) class action.

## Background

The case before the Court was the third of three identical putative class actions alleging the defendant, a fertilizer manufacturer, of violating securities fraud provisions of the Securities Exchange Act of 1934. The prior class actions failed, first, for lack of predominance and, second, because the class representatives were inadequate and atypical.

Absent members of the first two classes filed an essentially identical third class action. By that time, however, the applicable two-year statute of limitations had run.

The district court dismissed the plaintiffs’ case. The Ninth Circuit reversed, allowing the case to proceed. The Ninth Circuit held that the *American Pipe* rule also applied to toll otherwise untimely follow-on (“stacked”) class actions.

## Arguments

The defendant argued that *American Pipe* equitable tolling applies only to individual actions brought by previously absent class members, not to subsequent class actions. It objected to the Ninth Circuit’s rule because it extends equitable tolling despite lack of diligence on the part of the claimants and in a circumstance where the Federal Rule of Civil Procedure 23 (FRCP 23) policies underlying the *American Pipe* holding do not apply. Moreover, the defendant warned of a practical consequence of the Ninth Circuit’s rule: the “perpetual stacking of one class action after another.” This, it argued, would defeat the purpose of statutes of limitations — to promote diligence and grant defendants repose.

The plaintiffs asserted that the defendant’s argument contravenes FRCP 23. They argued that FRCP 23 “creates a categorical rule” that applies automatically in all federal civil actions, *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010), allowing a plaintiff who satisfies the Rule’s requirements to move for class certification. The plaintiffs also declared that the defendant’s argument contravenes the Rules Enabling Act.

## Eric R. Magnus

Principal and Office Litigation  
Manager  
404-525-8200  
Eric.Magnus@jacksonlewis.com

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The Act provides that “use of the class device cannot ‘abridge . . . any substantive right.’” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1046 (2010) (quoting 28 U.S.C. § 2072(b)). They also argued that the defendant’s fears of rampant “stacking” of class actions are without basis, noting that the Court had rejected that argument in *Smith v. Bayer Corp.*, 564 U.S. 299 (2011), because existing tools of judicial administration were sufficient to prevent abuse.

### Time-Barred is Time-Barred

The Supreme Court was persuaded by the defendant’s reasoning that neither *American Pipe* nor other Supreme Court precedent “so much as hints that tolling extends to otherwise time-barred class claims.”

Justice Ginsburg, writing for the Court, noted that the interest of “economy of litigation” supports *American Pipe* tolling of the limitation period for *individual* claims, delaying those claims until after class certification is denied. In contrast, efficiency interests support early assertion of *class* claims, the Court said. FRCP 23(c)(1)(A) itself precludes untimely successive class actions by providing that class actions should be resolved early in the process. The plaintiffs’ position, the Court continued, “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.” Because the plaintiffs had no substantive right to bring their claims outside the statute of limitations, the Court’s holding does not violate the Rules Enabling Act.

The Court explained, “What the Rules do not offer is a reason to permit plaintiffs to exhume failed class actions by filing new, untimely class actions.” Rather, it continued, “The watchwords of *American Pipe* are efficiency and economy of litigation, a principal purpose of Rule 23 as well.” The Court thus rejected the plaintiffs’ effort to extend the ambit of *American Pipe* to follow-on class actions beyond the expiration of the statute of limitations.

The Court reversed and remanded the case back to the Ninth Circuit.

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Although this case took place in the context of a securities class action, its holding applies to class action litigation across practice areas, including in the labor and employment arena. The Court’s decision does not prevent a plaintiff from promptly joining an existing suit or filing an individual action once class action certification has been denied.

One consequence of the Court’s decision is that employees may decide to file multiple class actions earlier, resulting in consolidation of cases or parallel actions.

Please contact a Jackson Lewis attorney if you have any questions about the Court’s decision or class actions in general.

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