

# U.S. Supreme Court to Decide Case Having Huge Implications in Connecticut's Concrete Class Action Litigation

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On March 26, 2018 the U.S. Supreme Court heard argument on *China Agritech v. Resh*, a case considering the question of whether the *American Pipe* rule – see explanation below – tolls statutes of limitations to permit a previously absent class member to bring a subsequent class action outside the applicable limitations period. The time limit for filing lawsuits is the statute of limitations; the *American Pipe* rule concerns putting a “toll,” or pause on that time limit.

The *American Pipe* rule states that commencing a class action suspends all applicable statutes of limitations against members of that class who would have been parties had the suit been allowed to continue as a class. The purpose of a statute of limitations, as Justice Stewart writes in the opinion, is to “prevent[] surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.”

Practically, what the *American Pipe* rule means is that if a class certification is denied, a member of that would-be class can proceed **individually** even if the statute of limitations has run. The filing of the initial class action acts to stop the timeframe during which a potential class plaintiff can bring a claim. The plaintiffs in *China Agritech v. Resh* twice tried unsuccessfully to have a class certified, and on the third attempt, China Agritech moved to dismiss arguing that the statute of limitations has passed on a class action lawsuit. The District Court agreed with China Agritech. The plaintiff’s appealed and the 9th Circuit reversed and held that the statute of

limitations period for class actions was tolled during the pendency of related uncertified class actions brought by other potential class-plaintiffs.

By agreeing to hear argument on *China Agritech v. Resh*, the Supreme Court agreed to decide what limitations should be placed on the holding of *American Pipe*. Specifically, if the holding of *American Pipe* ought to be extended to plaintiffs who bring another *class action suit* after the initial class action certification was denied or if *American Pipe* simply allows plaintiffs to bring subsequent *individual actions* after the initial class certification has been denied.

***This case is important to our state because of the class action suit currently pending before the U.S. District Court for the District of Connecticut concerning insurance carriers’ handling of the cracking concrete foundation problem that ails much of the state.***

In the concrete class action suit, the home owner-plaintiffs allege that the insurance companies are a part of a concerted scheme to deny them coverage for their failing basement walls, which must be replaced. If the Supreme Court overturns the 9th Circuit it will mean that the home owners not currently involved in the concrete class action suit could not bring a subsequent class action claim in the event that the court denies class certification. However, if the Supreme Court agrees with the 9th Circuit, the filing of the class action will act to toll the statute of limitations thereby allowing new home owners to file suit as a class even though the statute of limitations may have passed.

The implications of the Supreme Court's eventual ruling in *China Agritech v. Resh* cannot be understated. With the Justices hearing arguments earlier this week, we will likely not have a definitive answer on the issue for some time.

For an update on the case, and to read a breakdown of the Supreme Court's forthcoming opinion, check back with BBS in the future. Or if you would like to speak with someone about your cracking foundation, call our office at the number below.

For links to the Supreme Court, *China Agritech v. Resh*, see:

<https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17-432.html>



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