Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—9th Cir.: American Pipe tolls statute of limitations for class actions too, (May 24, 2017)

Securities Regulation Daily Wrap Up

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By Anne Sherry, J.D.

Assessing the viability of a securities fraud class action, the Court of Appeals for the Ninth Circuit held that the statute of limitations was tolled during the pendency of two prior class actions. The court read American Pipe in conjunction with subsequent Supreme Court cases to toll not just individual actions, but also class actions. Allowing class action plaintiffs who were unnamed class members in previously uncertified classes to avail themselves of tolling would advance the policy objectives that led the Court to permit tolling in the first place (Resh v. China Agritech, Inc., May 24, 2017, Fletcher, W.).

China Agritech actions. Several named plaintiffs brought a class action against China Agritech and its officers and directors. The plaintiffs were unnamed plaintiffs in two earlier class actions against most of the same defendants based on the same underlying events; class certification was denied in both of those earlier actions. The district court in Pasadena dismissed the new class action as time-barred, observing that the Supreme Court has not yet determined whether American Pipe allows tolling for an entirely new class action based on a substantially identical class. To hold the case timely "would allow tolling to extend indefinitely as class action plaintiffs repeatedly attempt to demonstrate suitability for class certification on the basis of different expert testimony and/or other evidence," reasoned the district judge (who also presided over the two earlier class actions).

American Pipe analysis. It was undisputed on appeal that the earlier class actions were timely and that American Pipe and Crown, Cork & Seal tolled the statute of limitations for the individual claims of would-be class members. The appeals court had to decide whether the plaintiffs' would-be class action based on the same claims was timely. In American Pipe, the Court characterized its tolling rule as serving the judicial economy interests underlying both statutes of limitations and class actions. In Crown, Cork & Seal, which extended American Pipe to the filing of new actions, the Court reasoned that inefficiencies would ensue if tolling were only permitted for class members seeking to intervene in an existing lawsuit.

The Ninth Circuit did, in Catholic Social Services, address the analytic structure in which American Pipe applies to future class actions. Although the court there held that a prior class action tolled the statute of limitations for a subsequent class action, it also wrote that if class certification had been denied in an earlier case, it would not allow plaintiffs to bring a class action to relitigate the correctness of that denial. But this is because of preclusion, not tolling, the Ninth Circuit now clarifies, with support from three recent Supreme Court decisions examining the interplay between statutes of limitations and other legal principles.

Based on a reading of this precedent, the appeals court concluded that "permitting future class action named plaintiffs, who were unnamed class members in previously uncertified classes, to avail themselves of American Pipe tolling would advance the policy objectives that led the Supreme Court to permit tolling in the first place." Defendants will not be unfairly surprised because the prior class action already alerted them to the claims brought against them and the number and general identities of the plaintiffs who may participate. The rule also promotes judicial economy by reducing incentives for filing protective class actions. Finally, the current legal system is adequate to respond to concerns about abusive filing of repetitive class actions.

The case is No. 15-55432.
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Companies: China Agritech, Inc.