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January 29, 2018

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WLF Urges Supreme Court to Bar Follow-on Class Actions Filed Many Years after an Initial Claim

(*China Agritech, Inc. v. Resh*)

“Congress has imposed a reasonable statute of limitations on securities fraud class actions. The plaintiffs’ bar should not be permitted to flout that limitations period by filing class actions *seriatim* following denial of class certification in an initial lawsuit.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—The Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to enforce reasonable statutes of limitations in securities fraud class actions. In a brief filed in *China Agritech, Inc. v. Resh*, WLF argues that the Court should reject efforts by the plaintiffs’ bar to authorize the filing of long-delayed class actions simply because another lawsuit was pending in the years prior to the class-action filings. WLF filed its brief with substantial *pro bono* assistance from Lyle Roberts, George Anhang, and Jenna Bailey, lawyers with Cooley LLP in Washington, D.C.

A federal statute of limitations states that a securities fraud claim is barred unless it is filed within two years of discovery of the facts constituting the alleged fraud. In 2011, the plaintiffs in this case became aware of facts that they allege demonstrated that a fertilizer company had misled its investors. However, the plaintiffs did not file suit until 2014, more than three years later. They contend (and the appeals court agreed) that their class-wide claims were not time-barred because another putative class action was pending against the company throughout a portion of the 2011-14 period. The court agreed that the limitations period for the 2014 suit should be equitably “tolled” from the filing of the prior lawsuit until the date on which the court hearing the prior lawsuit denied a motion to certify the class. The Supreme Court agreed to review the case in order to determine whether equitable tolling is properly applied under these circumstances.

In 1974, the Supreme Court ruled in *American Pipe* that when a putative class action is filed, the limitations period is tolled with respect to the *individual* claims of absent class plaintiffs until the trial court rules on a motion to certify the plaintiff class. The Court reasoned that up until that ruling, absent class plaintiffs could be excused for not filing their own lawsuits because they could reasonably expect that their interests were adequately represented by the named plaintiffs. WLF’s brief urges the Court not to expand the *American Pipe* rule so as to permit absent plaintiffs to file otherwise-tardy claims not only on their own behalves but also on behalf of the entire class. WLF argues that if equitable tolling is applied in that manner, there would be no end to *seriatim* class actions; even if class certification were denied in three successive lawsuits, plaintiffs’ lawyers could still file a fourth without regard to the limitations period.

Celebrating its 41st year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.