



Alert

Class and Derivative Actions Client Service Group

To: Our Clients and Friends

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Missouri Supreme Court Holds That Statutes of Limitations Are Not Tolloed by Putative Class Action Lawsuits Filed Outside of Missouri

In *Rolwing v. Nestle Holdings Inc.*, decided on June 10, 2014, the Missouri Supreme Court unanimously held that a certified class action against Nestle Holdings Inc. was time-barred despite a previously filed class action in Ohio that had asserted the same claims against Nestle. Bryan Cave LLP represented Nestle in the Missouri case. The *Rolwing* court held, as a matter of first impression, that the claims of the named plaintiff, who was not a named party in the Ohio lawsuit but who was a member of the putative class in that case, were not tolled during the pendency of the Ohio action. The Missouri Supreme Court's decision carries significant implications for the future defense of class actions in Missouri. In addition, *Rolwing* may influence other states' courts as they confront the divisive issue of cross-jurisdictional class action tolling. Finally, *Rolwing* may serve as a useful tool to defeat class certification in multistate class actions pending in other states because of the increased complexity in applying different states' laws regarding class action tolling.

Overview of the Case

In *Rolwing*, the named plaintiff was a shareholder of Ralston Purina Company when Ralston Purina and Nestle merged in 2001. Under the stock merger agreement, Ralston Purina's stock was converted into a cash payout to its shareholders of \$33.50 per share. Ralston Purina stock was converted on December 14, 2001, but the shareholders were not paid until December 18, 2001. The plaintiff alleged that he and other Ralston Purina shareholders were entitled to the accrued interest over that four-day span in 2001. A putative class action making the same allegations had been filed in Ohio state court in 2002. No class was ever certified in that case, and the Ohio Court of Appeals upheld summary judgment for Nestle in 2008. Rolwing did not file the Missouri lawsuit until 2011. After certifying the class, the Missouri trial court held that the class claims were barred by the five-year statute of limitations in R.S. Mo. § 516.120(1), which generally covers "all actions upon contracts, obligations or liabilities, express or implied," and that the statute was not tolled during the pendency of the Ohio action.

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On appeal, the Missouri Court of Appeals stated that it was inclined to affirm the trial court decision, but ultimately transferred the case to the Missouri Supreme Court because of a split among the intermediate appellate courts.

The Missouri Supreme Court affirmed the dismissal of the petition. The *Rolwing* court first rejected the plaintiff's argument that the ten-year statute of limitations in R.S. Mo. § 516.110(1) (which covers "an action upon any writing, sealed or unsealed, for the payment of money or property") applied to the dispute over the stock merger agreement. The court held that R.S. Mo. § 516.110(1) only applies when the plaintiff seeks a judgment for the payment of money specifically promised within a contract. No interest had been promised to shareholders in the stock merger agreement. It was not enough that the merger agreement contained a promise to pay money (*i.e.*, the merger consideration to Ralson Purina shareholders). The ten-year statute only applies when the writing contains such a promise *and* the plaintiff seeks judgment for the payment of the money that the defendant agreed to pay.

The plaintiff's second argument was that the Ohio putative class action had tolled R.S. Mo. § 516.120(1), making the Missouri lawsuit timely. The plaintiff relied heavily on the U.S. Supreme Court's opinion in *American Pipe & Construction v. Utah*, 414 U.S. 538 (1974). In *American Pipe*, the Supreme Court held that filing a putative class action under Federal Rule of Civil Procedure 23 tolled the statute of limitations for members of the putative class who later sought to intervene in the lawsuit after the denial of class certification. The Supreme Court later extended this tolling rule in *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983), to encompass members of the putative class who filed individual lawsuits after a court denied class certification. In both cases, the Supreme Court reasoned that, without tolling, a needless "multiplicity of activity" would occur as putative class members filed motions to join or intervene, or filed their own separate, protective suits to preserve their individual claims if they suspected or feared that a district court might deny class certification in the primary case. These inevitable consequences, the Court concluded, would undermine the basic goal of efficiency behind Rule 23.

While the *American Pipe* rule does not bind state courts, a prior Missouri Court of Appeals decision (not mentioned in *Rolwing*) had suggested that *American Pipe* tolling applies to individual claims when a prior class action was filed in federal court. See *Hyatt Corp. v. Occidental Fire & Cas. Co. of N.C.*, 801 S.W.2d 382, 389 (Mo. App. 1990).

In *Rolwing*, the Supreme Court of Missouri expressly considered the *American Pipe* tolling rule, but refused to apply the rule based on a prior, out-of-state class action. The *Rolwing* court grounded its holding on two observations. First, *American Pipe* was "materially distinguishable" from *Rolwing* because *American Pipe* "involved the tolling of individual federal actions while a federal class action was pending to preserve the underlying purpose of the class action procedure." *Rolwing*, No. SC93756, slip op. at 8. *Rolwing*, on the other hand, "involve[d] two independent state class actions." *Id.* In other words, the differences were twofold: (1) in *Rolwing* the two class actions were not filed within the same jurisdiction; and (2) the logic of *American Pipe* did not apply where the second lawsuit was also a class action. As a result, the court concluded that "[n]one of the concerns regarding the preservation of the purpose of class actions" in *American Pipe* was present. *Id.* Therefore, the court rejected the theory of cross-jurisdictional class action tolling.

Second, the *Rolwing* court noted that, under Missouri law, a statute of limitations “may be suspended or tolled only by specific disabilities or exceptions enacted by the legislature,” and that Missouri courts could not extend those exceptions. *Id.* (internal quotation omitted). In this regard, “[t]he only recognized equitable tolling principles apply when the plaintiff was prevented from timely filing suit by the defendant’s actions or other pending litigation.” *Id.* Since *American Pipe* tolling had neither a statutory nor equitable basis, the court strictly enforced the five-year statute of limitations and upheld the trial court’s dismissal of the petition.

Why *Rolwing* Matters

Federal courts are split regarding whether the *American Pipe* tolling rule applies to putative class actions filed after class certification has been denied in a prior case. The obvious concern is that plaintiffs may “piggyback” successive class actions upon each other and jump from court to court until they receive a favorable class certification ruling—possibly long after the expiration of the statute of limitations. Some federal courts hold that the grounds for the initial denial of class certification decide whether a putative class member’s claims will be tolled for a successive class action. *Yang v. Odom*, 392 F.3d 97 (3d Cir. 2004); *Catholic Social Servs., Inc. v. I.N.S.*, 232 F.3d 1139 (9th Cir. 2000) (en banc). For instance, if class certification is denied because of an inadequate class representative under Rule 23(a)(4)—and not a “problem” with the structure of the class itself, such as a lack of numerosity under Rule 23(a)(1)—*American Pipe* tolling will apply. See also *Sawyer v. Atlas Heating & Sheet Metal Works, Inc.*, 642 F.3d 560, 562 (7th Cir. 2011) (Easterbrook, J.) (explaining this principle as a matter of issue preclusion, not tolling). Other courts, however, refuse to apply the *American Pipe* rule at all in the context of successive class actions. See, e.g., *Griffin v. Singletary*, 17 F.3d 356, 359 (11th Cir. 1994). In dicta, the Eighth Circuit has suggested that it would follow the first approach, see *Great Plains Trust Co. v. Union Pacific R.R.*, 492 F.3d 986 (8th Cir. 2007), but no Missouri federal court has specifically weighed in on this issue.

Missouri has now joined the second group. The *Rolwing* ruling is important in both removable and non-removable class actions. In light of *Rolwing* and the Eighth Circuit dicta described above, a defendant who might otherwise remove a class action to federal court might now be wise to remain in Missouri state court to exercise this defense rather than risk an adverse ruling in federal court that would extend the *American Pipe* tolling rule to successive class actions. *Rolwing* may also serve as a basis for arguing against class certification in “piggybacked” class actions because of manageability and predominance concerns arising from the application of different rules regarding class action tolling in different states.

In addition, *Rolwing*’s reasoning suggests that the *American Pipe* rule may not apply under *any* circumstances in Missouri. The facts in *Rolwing* concerned cross-jurisdictional tolling (that is, Ohio state court to Missouri state court) and successive class actions (instead of a class action followed by an individual lawsuit). Nevertheless, the court concluded that any exception to a statute of limitations must either come from the Missouri legislature or from the “only recognized” equitable tolling principles, which involve scenarios where obstacles prevent a plaintiff from filing suit in a timely fashion. Neither of these exceptions applied in *Rolwing*. Therefore, there is strong reason to argue that the *American Pipe* tolling rule does not apply in Missouri, regardless of the location of the first class action, and regardless of the nature of the second lawsuit.

Finally, it remains to be seen how *Rolwing* will influence courts in other states. Although *Rolwing* is not the first state-court decision to reject cross-jurisdictional class action tolling, its recognition that courts generally may not toll statutes of limitations absent an express legislative enactment might prove to be highly persuasive in states with similar legal regimes.

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