

SOUTHERN DISTRICT CIVIL ROUNDUP

When a First-Filed Class Action Tolls Claims for a Second

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Under Rule 23 of the Federal Rules of Civil Procedure, a court determines whether an action may proceed as a class action, a device meant to provide individuals with similar claims against the same defendant an efficient and effective means to seek justice.

In deciding whether to certify a class action, the court considers questions of numerosity of litigants, commonality of questions of law and fact, typicality of claims and defenses, and adequacy of representation.

While potential class members await the court's decision on certification, the statute of limitations on their individual claims may expire. If the court ultimately denies the motion to certify a class, absent the application of a tolling doctrine, the claims of the individual members of the putative class may have become time-barred in the meantime.

To address this issue and preserve the class action device, the Supreme Court announced a class action tolling doctrine in *American Pipe and Construction Co. v. Utah*, 414 U.S. 538, 553 (1974), establishing that the filing of a federal class action complaint tolls the statute of limitations for all persons who fall within the putative class and who make timely motions to intervene after the denial of class certification.

Nine years after *American Pipe*, the Supreme Court extended the tolling doctrine to allow putative



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class members to bring separate actions against the defendant without having to intervene in the original action. *Crown, Cork & Seal Co. v. Parker*, 463 U.S. 345, 353-54 (1983). Thirty-five years later, however, a unanimous court limited the doctrine by holding that *American Pipe* tolling does not extend to putative class members who bring claims as a new class action after class certification is denied in the prior action. *China Agritech, Inc. v. Resh*, 584 U.S. 732, 740 (2018).

Against the backdrop of these Supreme Court decisions, lower courts have had to decide whether tolling applies to putative class members' claims in different scenarios, which has resulted in inconsistency in decisions regarding tolling among the circuits and within jurisdictions.

In *Mbadiwe v. Amazon.com Inc.*, 2025 WL 2675937 (S.D.N.Y. Sept. 18, 2025), Southern District Judge

Vernon S. Broderick addressed an unsettled issue implicating *American Pipe* tolling: whether the doctrine broadly applies to state claims, such that a state's statute of limitations is tolled "by the pendency of a class action in another jurisdiction." *Chavez v. Occidental Chem. Corp.*, 933 F.3d 186, 189 (2d Cir. 2019).

Plaintiffs were consumers of Amazon who brought class claims under antitrust and consumer protection laws of 29 states two and a half years after different plaintiffs had filed a class action asserting similar state law claims, as well as claims under the federal antitrust laws, against Amazon in the Western District of Washington. *Frame-Wilson v. Amazon.com, Inc.*, No. 20-CV-424 (W.D. Wash. 2020). At the time plaintiffs in *Mbadiwe* commenced their action, no class certification motion had been filed or decided in the earlier *Frame-Wilson* action.

On Sept. 18, 2025, Broderick issued a decision holding that (1) *American Pipe* tolling applied to a successive class action commenced when the issue of class certification had not yet been resolved in a prior class action; and (2) for states that have adopted *American Pipe* tolling but not opined on whether cross-jurisdictional tolling applies, a rebuttable presumption exists that such states also would adopt cross-jurisdictional tolling.

'Mbadiwe v. Amazon.com'

In *Mbadiwe*, two residents of New York brought a class action invoking diversity jurisdiction and asserting state law claims alleging that a specific provision of Amazon's Business Solutions Agreement for third-party sellers constituted an illegal price-fixing agreement.

The provision at issue, called the "Price Parity Restriction" (PPR), bound third-party sellers on Amazon's platform to "maintain parity between the products" offered on the Amazon website and those offered on the third-party sellers' own sales channels. To sell on Amazon, however, third-party sellers had to pay fees that could equal up to 30% of the product price so sellers theoretically incorporated this cost into their product prices.

Because of the PPR, even on platforms that did not require such high fees, third-party sellers had to keep the price of the product consistent with

the product's Amazon price. Amazon ensured compliance with the PPR through automated scans of competitor platforms, imposing penalties for non-compliance.

The named plaintiffs in *Mbadiwe*, two individuals who purchased products on Amazon's competitor platforms in Dec. 2018 and Feb. 2019 for a price equal to the lowest price listed on Amazon, initiated the action in Nov. 2022, seeking damages under the laws of 29 states on behalf of a putative class of "purchasers of products from Amazon's competitors." Amazon filed a motion to dismiss the complaint, arguing, among other things, that plaintiffs' claims were time-barred.

'American Pipe' Tolling

In addressing whether plaintiffs' claims were time-barred, Broderick first addressed the applicable law for determining timeliness. "[S]tate statutes of limitations govern the timeliness of state law claims under federal diversity jurisdiction," he explained, but because plaintiffs had raised statute of limitations tolls pursuant to *American Pipe* tolling and cross-jurisdictional tolling, Broderick discussed those two doctrines. Because the "adoption of the former [*American Pipe* tolling] does not necessarily imply adoption of the latter [cross-jurisdictional tolling]," Broderick analyzed the applicability of each doctrine separately.

Broderick began with *American Pipe* tolling, pursuant to which "the commencement of the original class suit tolls the running of the statute of limitations for all purported members of the class who make timely motions to intervene after the court has found the suit inappropriate for class action status." Amazon argued that *American Pipe* tolling did not apply to the facts here because plaintiffs filed a successive class action *before* the issue of class certification had been resolved in the prior class action.

Broderick noted that a circuit split existed with respect to a similar issue: whether *American Pipe* tolling extends to subsequent *individual* actions when class certification of a prior class action has not yet been resolved. He explained, however, that the Second Circuit held in *In re WorldCom Sec. Litig.*, 496 F.3d 245, 254 (2d Cir. 2007), that *American Pipe* applies in such situations, reasoning that

the defendant had already been put on notice of the claims against it from the prior class action.

As for whether the doctrine also applies to subsequent *class* actions when class certification of a prior class action has not yet been determined, Broderick cited to district court decisions in the Second Circuit and other jurisdictions that have extended *American Pipe* in such a way.

Having found that the reasoning of *American Pipe* does not distinguish between subsequently-filed individual actions and class actions, Broderick held that *American Pipe* tolling applies to a subsequent class action “when the issue of class certification was not resolved when the subsequent class action began.” Accordingly, Broderick concluded that *American Pipe* tolling applies to the scenario in *Mbadiwe*.

Cross-Jurisdictional Tolling

Having determined that *American Pipe* tolling applies, Broderick next analyzed the applicability of cross-jurisdictional tolling, which occurs “where a state’s statute of limitations is tolled ‘by the pendency of a class action in another jurisdiction.’”

He explained that courts in the Second Circuit disagree on the approach federal courts should take in deciding whether a state would recognize cross-jurisdictional tolling. Broderick noted that some courts have applied “a presumption against cross-jurisdictional tolling,” with others adopting the opposite presumption in favor of cross-jurisdictional tolling based on the reasoning of *American Pipe*.

Relying on what he characterized as Judge Naomi Reice Buchwald’s “well-reasoned decision” in *In re Libor-Based Fin. Instruments Antitrust Litig. (LIBOR)*, No. 11-MDL-2262, 2015 WL 4634541, at *129 (S.D.N.Y. Aug. 4, 2015), Broderick adopted an approach whereby a presumption exists in favor of applying cross-jurisdictional tolling that can be rebutted by “state-specific considerations” to the contrary.

Like the *LIBOR* court, Broderick cited various policy rationales that he found favored this approach, including that “defendants have fair notice regarding th[e] claims;... class members act reasonably

in relying on the class action; and... individual suits are disfavored when a class action is appropriate.”

In addition, Broderick concluded that rejecting cross-jurisdictional tolling “could incentivize plaintiffs to file duplicative ‘placeholder’ suits throughout the state jurisdictions while their other class action is pending.” Accordingly, he opined that a “rebuttable presumption [exists] that states that have adopted *American Pipe* tolling would also adopt cross-jurisdictional tolling.”

Having addressed the conflicting approaches and settling on the presumption in favor of cross-jurisdictional tolling, Broderick next conducted a state-by-state analysis to decide whether cross-jurisdictional tolling applied.

That analysis required him to address first whether the jurisdiction had adopted *American Pipe* tolling, and if so, whether a basis existed to believe that the state nevertheless would reject cross-jurisdictional tolling. For those states that had adopted *American Pipe* tolling and no such basis existed, Broderick found the asserted state law claims timely.

Conclusion

Broderick’s decision in *Mbadiwe* resolves an unsettled issue implicating *American Pipe* tolling in a way that extends tolling to cover more claims: whenever a state has adopted *American Pipe* tolling, a presumption exists that it also allows cross-jurisdictional tolling.

Other courts in the Southern District and elsewhere, however, have adopted the opposite presumption, suggesting that this may be yet another aspect of *American Pipe* tolling on which the Supreme Court ultimately will weigh in.

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