

Delaware Extends Class Action Tolling to Cross-Jurisdictional Class Actions

On June 10, 2013, the Delaware Supreme Court in *Dow Chemical Corp. & Dole Food Company, Inc. v. Blanco*¹ addressed as a matter of first impression in Delaware whether Delaware law allowed a tolling exception for cross-jurisdictional class actions. In its analysis, the Delaware Supreme Court turned to United States Supreme Court cases on the law of class action tolling, decisions by other state supreme courts, and its own precedent. The Court ultimately concluded that Delaware law does recognize the concept of cross-jurisdictional class action tolling.

I. Factual Background and Procedural History²

The plaintiff, Jose Rufino Canales Blanco (“Blanco”), worked as a laborer on a banana plantation in Costa Rica from 1979 to 1980. During this time, he was allegedly exposed to the toxic pesticide. In 1993, Blanco joined a class action lawsuit instituted against the defendants in Texas as a member of a putative class claiming injury from exposure. Due to various procedural hurdles and developing United States Supreme Court precedent, consideration of class certification by the Texas state court was delayed until 2010, at which time the Texas court denied class certification. In 2011, Blanco filed an individual action in the Superior Court of Delaware. Blanco alleged the same injury as was alleged in the Texas class action.

Defendants in the Delaware action moved for judgment on the pleadings, arguing that Blanco’s claims were barred by the two-year statute of limitations under 10 *Del. C.* § 8119. Blanco contended that his claims were not barred because the filing of the Texas class action had tolled the statute of limitations. The Superior Court denied the defendants’ motion. Ruling on an issue of first impression for Delaware, the Superior Court recognized the doctrine of cross-jurisdictional class action tolling, holding that the Delaware statute of limitations was tolled by the filing of the putative class action in Texas. The Superior Court granted the defendants’ application for an interlocutory appeal on the question of whether Delaware recognizes the doctrine of cross-jurisdictional tolling. The Supreme Court accepted the limited appeal.

II. The Decision of the Delaware Supreme Court

The Delaware Supreme Court began its analysis by turning to *American Pipe & Construction Co. v. Utah*,³ the U.S. Supreme Court case that first established a tolling exception for class actions. *American Pipe* justified class action tolling by balancing two countervailing interests: (1) achieving judicial economy and efficiency, which is the goal underlying class action procedures, and (2) providing notice to defendants, which is the goal underlying statutes of limitation.⁴ Although *American Pipe* addressed only class action tolling where the subsequent individual action takes place in the same jurisdiction as the original class action filing (“intra-jurisdictional tolling”), the Delaware Supreme Court found the dual interests highlighted in *American Pipe* to apply equally to the question of cross-jurisdictional class action tolling.⁵ In particular, the Court was concerned

¹ *Dow Chem. Corp. v. Blanco*, No. 492, 2012 (Del. June 10, 2013), available at <http://courts.delaware.gov/opinions/download.aspx?ID=190360> (the “Opinion”).

² The factual background is summarized from the lower court opinion being appealed, *Blanco v. Amvac Chem. Corp.*, C.A. No. N11C-07-149, at 2-11 (Del. Super. Ct. Aug. 8, 2012), available at <http://courts.delaware.gov/opinions/download.aspx?ID=176550>. The procedural history is summarized from the Opinion.

³ 414 U.S. 538 (1974).

⁴ Opinion at 7-8 (discussing *American Pipe*, 414 U.S. at 553-54).

⁵ *Id.* at 11.

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that without cross-jurisdictional class action tolling, members of putative class actions would file “placeholder” lawsuits in Delaware courts in order to preserve their claims.⁶ Such suits would result in wasteful and duplicative litigation, which runs counter to the policy goal of efficiency and economy behind class actions.

The Court was also persuaded by decisions in other state supreme courts upholding cross-jurisdictional class action tolling. In one case establishing cross-jurisdictional class action tolling, the Montana Supreme Court found that, because the defendants were on notice through the timely filing of the class action suit, the policy goals underlying the statute of limitations were satisfied.⁷ Like the Delaware Supreme Court, the Montana Supreme Court was also concerned about the potential burden from placeholder suits.⁸ The Ohio Supreme Court relied on similar reasoning, finding that the dual interests in *American Pipe* also applied to the question of cross-jurisdictional tolling.⁹

The Court lastly turned to its own previous pronouncements on the tolling of statutes of limitations in *Reid v. Spazio*.¹⁰ In that case, the Court found that the relevant statute of limitations under Delaware law was tolled by an original suit brought by the plaintiff in a different jurisdiction.¹¹ Although the case focused on the applicability of a particular tolling statute in Delaware, the Court found the considerations expressed to be equally relevant. In particular, *Reid* reflected Delaware’s “preference for deciding cases on the merits,” and applied an *American Pipe* analysis to support its conclusion, balancing the dual concerns of judicial economy and efficiency and notice to defendants.¹²

The Court concluded its analysis by dismissing the concern that cross-jurisdictional tolling would open Delaware to a floodgate of litigation.¹³

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; or John Schuster at 212.701.3323 or jschuster@cahill.com.

⁶ *Id.* at 7-8.

⁷ *Id.* at 8-9 (discussing *Stevens v. Novartis Pharmaceuticals Corp.*, 247 P.3d 244, 249-56 (Mont. 2010)).

⁸ *Id.* at 9.

⁹ *Id.* (discussing *Vaccariello v. Smith & Nephew Richards, Inc.*, 763 N.E.2d 160, 161-63 (Ohio 2002)).

¹⁰ 970 A.2d 176 (Del. 2009).

¹¹ Opinion at 10-11 (discussing *Reid*, 970 A.2d at 182-86).

¹² *Id.* (citation omitted).

¹³ Other courts have rejected cross-jurisdictional tolling on this basis, reasoning that plaintiffs would engage in forum shopping and bring suits that they otherwise could not have brought. See Opinion at 13 (citing *Wade v. Danek Medical, Inc.*, 182 F.3d 281, 288 (4th Cir. 1999); *Maestas v. Sofamor Danek Group, Inc.*, 33 S.W.3d 805, 808 (Tenn. 2000); *Portwood v. Ford Motor Co.*, 701 N.E.2d 1102, 1104 (Ill. 1998)).