

March 14, 2014

**SUPREME COURT TO RESOLVE UNCERTAINTY  
OVER TIME LIMITS TO BRING CLAIMS  
IN FEDERAL SECURITIES CLASS ACTIONS**

On March 10, 2014, the Supreme Court granted certiorari in *Public Employees' Retirement System of Mississippi v. IndyMac MBS Inc.*, No. 13-640, to examine the impact of the class action tolling rule it previously recognized in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974), on the three-year repose period under Section 13 of the Securities Act of 1933. Statutes of limitations and statutes of repose both place crucially important temporal restrictions on the assertion of claims. However, while limitations periods are subject to tolling under judicially-crafted equitable principles, the running of a repose period is tolled only where a statute so provides. Thus, statutes of repose (like Section 13) are substantive in nature, extinguishing a cause of action after a period of time, typically measured from the moment of the alleged wrongful act or omission. Both repose periods and limitations periods are frequent subjects of motion practice at the early stages of securities actions and other sorts of litigation.

In *American Pipe*, the Supreme Court held that "the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action." *American Pipe*, 414 U.S. at 554. The Second Circuit held in *IndyMac* that the *American Pipe* rule -- whether characterized as a form of equitable tolling, or as "legal" tolling based on Fed. R. Civ. P. 23 -- cannot extend the three-year time limit under Section 13. *In re IndyMac Mortgage-Backed Sec. Litig.*, 721 F.3d 95, 107-09 (2d Cir. 2013). Over a decade earlier, however, the Tenth Circuit found *American Pipe* tolling applicable to the Section 13 repose period. See *Joseph v. Wiles*, 223 F.3d 1155 (10th Cir. 2000). (Click [here](#) to access a Securities Litigation Alert we prepared last July, describing in greater detail the facts of *IndyMac* and the Second Circuit's reasoning.)

The Supreme Court's ruling in *IndyMac* may have significance well beyond civil litigation under the Securities Act. Notably, private civil actions under Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5, as well as many other statutes that class action plaintiffs commonly invoke, are subject to repose periods. Thus, the ruling in *IndyMac* is likely to clarify the applicability of *American Pipe* tolling in a variety of contexts, and will be of great interest not only to public companies and their directors, officers and outside professionals, but also to a broad range of parties that confront the possibility of class action litigation. The Supreme Court is expected to hear and decide *IndyMac* in its October 2014 term.

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