No. 24-974

In the Supreme Court of the United States

TECH MAHINDRA (AMERICAS) INC.,
PETITIONER,
v.
LEE WILLIAMS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

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The petition in this case presents two issues that warrant this Court's review: First, the decision below deepened a split over whether the mere submission of a proposed amended complaint can toll a statute of limitations. Second, the panel defied this Court's decision in *China Agritech v. Resh*, 584 U.S. 732 (2018), by holding that the so-called "wrong-forum tolling" doctrine can excuse the untimely filing of not only a plaintiff's individual claims, but also the claims of an entire class whom that plaintiff seeks to represent. Both issues are exceedingly important, and this case is an ideal vehicle in which to address them.

Respondent tries to explain away the circuit split on the first issue by recharacterizing the decision below as a fact-bound application of equitable-tolling rules, but the opinion speaks for itself: The panel recognized that its decision turned on a discrete legal question about the effect of a proposed amended complaint, and it indisputably answered that question differently from the Second, Fourth, Fifth, and Seventh Circuits.

As to the second issue, Respondent seeks to minimize the need for review by dismissing the risks of unchecked equitable tolling in the class-action context. But as the Securities Industry and Financial Markets Association (SIFMA) and Chamber of Commerce explain, allowing putative class representatives to circumvent *China Agritech* by invoking the wrong-forum tolling doctrine creates an unjustifiable—and dangerous—loophole in this

Court's precedents. The Court should not allow that loophole to go unreviewed.

I. THIS COURT SHOULD GRANT REVIEW TO CLARIFY THE TOLLING EFFECT OF PROPOSED AMENDED COMPLAINTS

A. The Circuits Are Divided.

1. The decision below deepened an existing split over the tolling effect of proposed amended complaints. Previously, only the Sixth Circuit had held that the submission of a proposed amended complaint, by itself, can trigger tolling. The Second, Fourth, Fifth, and Seventh Circuits, by contrast, had all held that, where a plaintiff must obtain leave of court to amend a complaint, the submission of a proposed amended complaint cannot justify tolling if leave is not granted.

Respondent argues (at 4–12) that review is unwarranted because, as he sees it, the decision below involved equitable tolling, whereas the decisions on the other side of the split involved "Rule 15 legal tolling." According to Respondent, "the applicability of equitable tolling is highly case-specific and not amenable to the mechanical application of rigid rules, like the requirement for Rule 15 legal tolling." BIO 10. And Respondent argues that "the availability of equitable tolling based on the specific facts presented in this case is not appropriate for Supreme Court review." BIO 11.

The Third Circuit would be surprised by Respondent's reimagining of its decision. Indeed, the panel expressly rejected the efforts of the district court and the parties to frame the relevant analysis in terms of "Rule 15 legal tolling." Pet. App. 8a n.4 (internal quotation marks omitted). The panel instead described the question presented as follows: "does a motion for leave to file an amended complaint to add a plaintiff, accompanied by a proposed amended complaint, constitute a 'filing' by the proposed plaintiff sufficient to permit that plaintiff to rely on wrong-forum tolling, even if that motion is denied?" *Id.* at 4a. And it answered that question in the affirmative "because the document was delivered to the court and entered on the docket." *Id.* at 8a.

In reaching that conclusion, the panel squarely confronted decisions on the other side of the split, such as *United States ex rel. Mathews v. HealthSouth Corp.*, 332 F.3d 293 (5th Cir. 2003), and it tried to distinguish those decisions on the ground that "they involve situations in which the original party seeks to add claims, not parties, to the complaint." Pet. App. 6a n.2. Petitioner has explained (at 18–19) why that purported distinction does not hold up. But the panel clearly understood itself to be addressing the same question as *Mathews*—whether "a denied motion for leave to file an amended complaint" can have "legal effect to toll a statute of limitations," Pet App. 6a n.2—not some separate question about equitable rather than Rule 15 tolling.

A fair reading of *Mathews* confirms that the Fifth Circuit was addressing the same question as the panel below. Respondent argues (at 5) that *Mathews* "did not even involve any equitable tolling issue." But *Mathews* adopted a categorical rule: "'The failure to obtain leave results in an amended complaint having no legal effect. Without legal effect, it cannot toll the statute of limitations period." 332 F.3d at 296. That rule applies as much in a wrong-forum tolling case as it does in any other.

The Fourth Circuit's decision in *Angles v. Dollar Tree Stores, Inc.*, 494 F. App'x 326 (2012), is also directly contrary to the decision below. Respondent claims (at 7) that the petition "misleadingly cites the portion of *Angles* where the court denied legal tolling under Rule 15 and ignores the separate portion of *Angles* where the court affirmed the denial of equitable tolling for entirely different reasons that are not applicable here." But the Fourth Circuit drew no such hermetic distinction. It first explained that, under Rule 15, an amended complaint for which leave is not granted is never filed and thus has no legal effect. *See* 494 F. App'x at 328–29. It then rejected the plaintiffs' argument that equitable tolling should apply under *Burnett v. New York Central Railroad Co.*, 380 U.S. 424 (1965), because there were "key factual and procedural distinctions between *Burnett* and this case, namely that unlike in *Burnett*, no timely . . . action was ever actually commenced because the motion to amend was never granted." *Angles*, 494 F. App'x at 332 (internal quotation marks omitted). The same is true here: Respondent's

amended complaint was never actually filed, so wrong-forum tolling does not apply.

Respondent's attempts to distinguish *Goldblatt v. National Credit Union Administration*, 502 F. App'x 53 (2d Cir. 2012), and *Warren v. Vazquez*, No. 21-2017, 2023 WL 2388354 (7th Cir. Mar. 7, 2023), fare no better. Respondent argues (at 8–9) that those decisions involved both Rule 15 tolling and equitable tolling, and that the petition cited only the Rule 15 portions of the decisions. As just discussed, however, the panel below understood itself to be addressing the broader question whether proposed amended complaints can toll statutes of limitations if leave is not granted. And while the panel thought the answer was yes, the Second and Seventh Circuits said the answer was no. *See Goldblatt*, 502 F. App'x at 55 ("The unsuccessful effort to add the NCUA as a party in the other case did not toll the limitations period."); *Warren*, 2023 WL 2388354, at *1 ("[T]he tolling effect was wiped away when Judge Young denied the motion to amend."). The fact that those courts also addressed other equitable tolling arguments that were not presented here does not lessen their disagreement with the Third Circuit over the issue that all three courts did address.

2. In a further effort to minimize any conflict with the decisions of other courts of appeals, Respondent characterizes the panel's decision as a mere fact-bound application of equitable principles. *See* BIO 11 ("Since the appropriateness of equitable tolling must be determined based on the balance of the equities on

a case-by-case basis, this Court should not disturb the Third Circuit's directive for the District Court to do just that in this case."); BIO 15 (similar). The tolling effect of proposed amended complaints, however, is a potentially case-dispositive threshold *legal* question to which this Court can provide a clear answer.

The proceedings below make that point apparent. The district court held that Respondent's class claims should be dismissed for the sole reason that he failed to show that "a motion for leave to amend—which is later denied—has the legal effect of tolling the limitations period." Pet. App. 24a; *see id.* at 24a n.8 ("Plaintiff's wrong-forum tolling argument is denied on this basis alone."). The Third Circuit then framed the "single question" before it as whether "a motion for leave to file an amended complaint to add a plaintiff, accompanied by a proposed amended complaint, constitute[s] a 'filing' by the proposed plaintiff sufficient to permit that plaintiff to rely on wrong-forum tolling, even if that motion is denied." *Id.* at 4a. And it found that further proceedings were necessary only because it disagreed with the district court about the answer to that discrete legal question. *Id.* at 10a.

B. The Decision Below Is Wrong.

The Third Circuit's resolution of the first question presented was flawed in multiple respects. *See* Pet. 15–20. The court improperly equated the filing of a complaint with the submission of a proposed amended complaint; analogized to dissimilar cases while failing to follow similar ones; and mistakenly

relied on cases discussing the legal effect of motions for leave that are granted, rather than denied.

In seeking to defend the panel's decision, Respondent focuses on the court's choice to treat complaints and proposed amended complaints identically, arguing (at 12) that "there is no principled basis to apply wrong-forum equitable tolling to" one but not the other.[1] But the relevant Federal Rules of Civil Procedure set out distinct standards that require distinct treatment. *Compare* Fed. R. Civ. P. 5(d)(2), (4), *with id.* 15(a)(2); *see* Pet. 15–16. In addition, treating proposed amendments differently from initial complaints guards against "bad faith, undue delay, prejudice to the opposing party, and futility of amendment." *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987). And as Petitioner explained—and Respondent nowhere disputes—the rule adopted by the Second, Fourth, Fifth, and Seventh Circuits also "promotes the efficient management of litigation by eliminating any ambiguity as to which complaint is operative." Pet. 17.

Respondent suggests that accepting those arguments would eviscerate wrong-forum tolling altogether because, "when a complaint is dismissed without prejudice due to a jurisdictional defect—the textbook application for wrong forum equitable

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[1] Respondent also argues (at 12) that the petition "conflat[ed] the legal standard for Rule 15 legal tolling . . . with the standard for equitable tolling." As discussed above, *see* pp. 2–5, *supra*, that argument lacks merit.

tolling—it is also deemed to have 'never existed.'" BIO 13 (quoting *Brennan v. Kulick*, 407 F.3d 603, 606 (3d Cir. 2005)); *see* BIO 13–14 ("If a defective filing can never serve as the basis for equitable tolling of the statute of limitations, then wrong forum tolling would be a nullity." (internal quotation marks omitted)). But as indicated in the petition (at 15–16), wrong-forum tolling can still apply based on a defective complaint—which is considered filed when it is delivered to the court—whereas a proposed amended complaint never has legal effect if leave or consent is not granted. Moreover, cases like *Brennan* "merely say [that] the earlier, timely filing of a complaint later dismissed without prejudice does not *per se* toll the limitations period." Pet. C.A. Br. 19–20 (discussing *Brennan*). They do not suggest that all complaints dismissed without prejudice are automatically treated as legal nullities. Indeed, in *Brennan* itself, the complaint had been dismissed without prejudice, but the court "refuse[d]" to proceed as though that "complaint never existed." 407 F.3d at 607.

Finally, Respondent asserts (at 15) that the petition did "not cite[] any case where a court held . . . that a plaintiff must file an original complaint—rather than *e.g.*, a motion to amend—to benefit from wrong forum tolling." But that is exactly what the Fourth Circuit held in *Angles*. As discussed above, *Angles* held that the plaintiffs' "motion for leave was never granted," and that "[t]he amended complaint was thus never filed and lacks the ability to toll the limitations period." 494 F. App'x at 329. The court then rejected the plaintiffs' argument that tolling should apply

under this Court's decision in *Burnett* because, "unlike in *Burnett*, no timely . . . action was ever actually commenced because the motion to amend was never granted." *Id.* at 332 (internal quotation marks omitted). It is hard to imagine a case being more on point.

II. THIS COURT SHOULD GRANT REVIEW TO ENFORCE THE BOUNDARIES SET IN *CHINA AGRITECH*

In addition to deepening a circuit split over the tolling effect of proposed amended complaints, the Third Circuit flouted this Court's decision in *China Agritech* by holding that wrong-forum tolling can apply to class claims. That issue independently warrants this Court's review, as the Third Circuit's decision will otherwise expose class-action defendants to myriad stale claims.

A. The Court Has Jurisdiction to Review Both Panel Decisions.

At the outset, Respondent argues (at 17–18) that this Court cannot review the Third Circuit's earlier decision because the petition for a writ of certiorari was not filed within 90 days of that decision's entry. This Court has long recognized, however, that it has "authority to consider questions determined in earlier stages of the litigation where certiorari is sought from the most recent of the judgments of the Court of Appeals." *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam). The Court thus has discretion to address the second

question presented and review it alongside the Third Circuit's more recent decision.

B. The Second Question Presented Is Exceedingly Important.

Compelling reasons exist for the Court to do so. As SIFMA and the Chamber of Commerce highlight in their *amicus* submission (at 10–15), suits by the class-action plaintiffs' bar have grown substantially in number, size, and complexity over the last seven years, fueled in part by artificial constraints that lower courts have placed on *China Agritech*. The Third Circuit's refusal to apply *China Agritech* to Respondent's claims is emblematic of that trend and presents this Court with an ideal opportunity to reaffirm the importance of limitations principles in the class-action context.

In arguing that the second question presented does not warrant review, Respondent asserts that "no other court has ever directly addressed whether equitable tolling applies to class claims." BIO 18 (emphasis omitted). That is plainly incorrect. *China Agritech* itself addressed and rejected the application of "*American Pipe*'s equitable-tolling exception to" class claims. 584 U.S. at 745. And as *amici* explain (at 14–15 & n.5), lower courts since then have improperly allowed equitable tolling of class claims based on narrow readings of *China Agritech*. Respondent cannot avoid the fact that the second question presented implicates a live, and profoundly important, issue.

Respondent separately argues that wrong-forum tolling presents no risk of serial class actions because it "is only available to plaintiffs who timely filed their claims before the original statute of limitations." BIO 19 (emphasis omitted). For that proposition, Respondent cites only the Third Circuit's own decision in *Doherty v. Teamsters Pension Trust Fund of Philadelphia & Vicinity*, 16 F.3d 1386, 1394 (1994), *as amended on reh'g* (Mar. 17, 1994), which held that "a party's claim, though filed in the wrong forum, must nevertheless be timely." *Doherty*, however, was not a class action, and in post-*China Agritech* cases involving class actions—including in the Third Circuit—courts have held that equitable tolling allows new class representatives to join existing class actions even after their statutes of limitations have run. *See, e.g.*, *Fund Liquidation Holdings LLC v. Bank of Am. Corp.*, 991 F.3d 370, 393 (2d Cir. 2021); *Schultz v. Midland Credit Mgmt.*, No. 2:16-cv-04415, 2019 WL 2083302, at *10 (D.N.J. May 13, 2019). If the new representatives' class claims are later dismissed on wrong-forum grounds, nothing in the panel's opinion (or Respondent's argument) would prevent them from re-filing in another forum, at which point yet another round of new class representatives could seek to join even if their own claims were otherwise untimely. The Third Circuit's decision thus paves the way for exactly the sort of open-ended tolling that this Court rejected in *China Agritech*.

C. The Third Circuit Defied *China Agritech*.

Finally, Respondent tries (at 21–24) to defend the panel's decision on the ground that *China Agritech*'s reasons for limiting *American Pipe* tolling do not apply to wrong-forum tolling. Respondent argues that he "did exactly what the *China Agritech* Court expressly sought to encourage: he came forward and sought to represent the class before his statute of limitations expired." BIO 23 (emphasis omitted). And he asserts that he "did not rely on the mere fact of a previous class action filing, but rather on his *own* reasonable diligence." *Id.* Finally, Respondent repeats his argument that "there is no risk of traditional 'wrong forum' equitable tolling being used to perpetuate repeated, follow-on class actions." *Id.*

As just discussed, Respondent is wrong to discount the risk that wrong-forum tolling will lead to serial class actions. And as explained in the petition (at 24–28), an individual plaintiff's diligence is insufficient to justify tolling claims for an entire class. Furthermore, Respondent was not diligent. He argues (at 22) that *China Agritech* "wanted to encourage would-be class representatives to come forward . . . before the statute of limitations expired." But *China Agritech* sought to encourage more than just timely filing. Rather, the Court explained that class claims should be brought "soon after the commencement of the first action seeking class certification" in order to "help ensure sufficient time remains under the statute of limitations, in the event that certification is denied for

one of the actions or a portion of the class." 584 U.S. at 740 & n.2. That decision did not envision—and would not have endorsed—the scenario here, in which a would-be lead plaintiff sought to join an existing class action more than three years after his claim accrued and just months before the four-year statute of limitations on his claims expired. Respondent waited until the last possible moment to make his intentions known, which is exactly what *China Agritech* sought to avoid.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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