

EACH PAYMENT VIOLATES RESPA, STARTS NEW LIMITATIONS PERIOD

The U.S. Court of Appeals for the Third Circuit recently [affirmed](#) the dismissal of a RESPA class action against a national bank, holding that the suit was untimely, but in the process, the court disagreed with other courts, which had calculated the statute of limitations for RESPA claims from the date of the loan's closing.

The two named plaintiffs in the underlying case, a putative class action, obtained mortgages from the bank in 2005 and 2006. The same two borrowers were members of the proposed class in a separate suit in 2011. In that earlier case, the plaintiffs claimed that the bank received kickbacks in violation of RESPA after referring homeowners to mortgage insurers that then obtained reinsurance from a subsidiary of the bank. The prior class action was dismissed as untimely in 2013, and while it was pending appeal, these plaintiffs filed a new class action as the named plaintiffs and alleged similar RESPA violations. At trial, the borrowers argued that their suit was timely, despite RESPA's one-year statute of limitations, based on: (i) the separate-accrual rule, claiming that each kickback is a discrete violation with its own limitations period; and (ii) because the filing of the first class action tolled the limitation period for their claims until November 2013, when it was dismissed, making their suit timely.

In dismissing the action, the Third Circuit panel agreed with the plaintiffs' separate-accrual theory, rejecting the bank's argument that RESPA's statute of limitations runs only from the mortgage closing, not from each later premium payment. The court held that the limitations period under RESPA accrues separately for each "kickback," stating that "a party violates the Act anew each time it takes the discrete act of giving or receiving a kickback under an agreement to make referrals." Dismissal was still appropriate, however, because under the Supreme Court's 2018 decision in *China Agritech, Inc. v. Resh*, American Pipe tolling—which generally tolls the individual claims of putative class members while a putative class action is pending—is not available for class actions, only for individual claims. The court rejected the appellants' arguments that *China Agritech* does not apply to new class claims filed before the first action has officially ended, stating, "it could lead to endless tolling, so long as each new class action overlapped the previous one."