EACH PREMIUM PAYMENT COULD VIOLATE RESPA'S PROHIBITION ON KICKBACKS

On June 19, the U.S. Court of Appeals for the 3rd Circuit affirmed the dismissal of a RESPA class action against a national bank, concluding the suit was not timely filed. According to the opinion, two consumers took out mortgages with the bank in 2005 and 2006. In 2011, the consumers were part of the putative class in a separate class action, alleging the bank violated RESPA by referring homeowners to mortgage insurers that then obtained reinsurance from a subsidiary of the bank, which the consumers claimed amounted to a kickback. After the class action was dismissed as untimely in 2013 and while it was pending appeal, the consumers filed a new class action as the named plaintiffs, which alleged the same violation of RESPA. The consumers argued that, while RESPA has a one-year statute of limitations, (i) RESPA makes each kickback a separately accruing wrong and that the insurers paid a kickback for each insurance premium payment, therefore, the suit is timely up to one year after the last premium payment and kickback; and (ii) the filing of the first class action tolled the limitation period for their claims and because the class action continued until November 2013, tolling extended their limitations period until then.

The appeals court upheld the district court's dismissal of the action, agreeing with the consumers' separate-accrual theory, but noting that the consumers paid no premiums in the year before they filed their complaint, so the limitations period had expired before the consumers filed the new action. Specifically, the appellate court rejected the bank's argument that RESPA's statute of limitations runs only from the mortgage closing, not from each later premium payment, holding that **under RESPA the limitations period accrues separately for each kickback, stating "[s]o 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."**

As for whether the 2011 class action tolled the consumers' claims, the appellate court cited the Supreme Court's 2018 opinion in *China Agritech, Inc. v. Resh*, noting that the Court in that case held that such tolling is only available for individual claims, not class claims. The appellate court rejected the consumers' arguments that *China Agritech* does not apply to new class claims filed before the first action has officially ended, stating, "[t]olling new class actions filed while the first one was pending would encourage more plaintiffs to seek second bites at the apple." Because the consumers' action was not timely filed, the appellate court affirmed the district court's dismissal.