

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

IN RE: RAIL FREIGHT FUEL SURCHARGE  
ANTITRUST LITIGATION

This document relates to:

ALL CASES

MDL Docket No. 1869  
Misc. No. 07-489 (PLF/AK/GMH)

**STIPULATION AND [PROPOSED] SECOND ORDER ON PLAINTIFFS' MOTION  
FOR A STAY OF PROCEEDINGS AND TO TOLL THE STATUTE OF LIMITATIONS**

**STIPULATION**

WHEREAS on October 30, 2017, Plaintiffs moved for entry of “an order staying these proceedings and extending the tolling of the statutes of limitations until the Court of Appeals either declines Plaintiffs’ Petition for Permission to Appeal Pursuant to Federal Rule of Civil Procedure 23(f) (the “Petition”) or, if the Petition is accepted for review, denies an appeal after full briefing.” ECF No. 845.

WHEREAS on November 6, 2017, Defendants filed a response stating that they “agree that this action should be stayed until the Petition is either denied or January 5, 2018 (60 days from the date of this filing), whichever is earlier.” Defendants further stated that they “agree to exclude from future statute of limitations calculations the time between (i) the date of the Court’s order denying class certification, and (ii) the date that the Petition is either denied or January 5, 2018, whichever is earlier” for “actions that are filed after the date in clause (ii).” ECF No. 849.

WHEREAS on November 8, 2017, the Court acknowledged Defendants’ representation regarding future statute of limitations calculations and, on the basis of that representation, concluded that it was not necessary to decide at that time (1) whether to enter an order extending tolling under the *American Pipe* doctrine beyond the date of the Court’s order denying class

certification, *see Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 554 (1974), or (2) whether the Court has the power to enter such an order. ECF No. 851. The Court therefore granted Plaintiffs' Motion in part and ordered that all proceedings in Miscellaneous Case No. 07-489 would be stayed until the earlier of (1) denial of Plaintiffs' Rule 23(f) Petition by the Court of Appeals, or (2) January 5, 2018. *Id.* Specifically, the Court stated:

It is not necessary for the Court to address at this time Plaintiffs' request for tolling, because Defendants have agreed, for claims previously tolled by the pendency of the class action, to exclude from future statutes of limitations calculations the time between (i) the date of the court's order denying class certification and (ii) the earlier of either the date when the pending Rule 23(f) Petition may be denied or January 5, 2018, for actions filed after the date in clause (ii). This determination is without prejudice to Plaintiffs renewing their request on or after the earlier of the date that the pending Rule 23(f) Petition may be denied or January 5, 2018.

*Id.*

WHEREAS on December 20, 2017, the Court of Appeals granted Plaintiffs' Rule 23(f) petition. *In re: Rail Freight Fuel Surcharge Antitrust Litig.*, Case No. 17-8005 (D.C. Cir.), ECF No. 1709931.

WHEREAS the parties have met and conferred, and Defendants have agreed to exclude from future statute of limitations calculations the time between (i) the date of the Court's order denying class certification, and (ii) the date that the Court of Appeals issues its merits-panel decision on Plaintiffs' appeal, for actions that are filed after the date in clause (ii).

WHEREAS the parties have met and conferred but have yet to reach agreement on a proposed extension of the stay of proceedings in this Court, and the parties will continue that dialogue and will present a joint proposal (or separate proposals) to the Court concerning a further stay by no later than February 9, 2018.

WHEREAS, the parties agree that, given the foregoing, Plaintiffs need not “renew[] their request” for tolling at this time. ECF No. 851.

THEREFORE, the parties request that the Court enter the following order:

**ORDER**

The Court again acknowledges Defendants’ representation regarding future statute of limitations calculations and, on the basis of that representation, again concludes that it is not necessary at this time to decide (1) whether to enter an order extending tolling under the *American Pipe* doctrine beyond the date of the Court’s order denying class certification, *see Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 554 (1974), or (2) whether the Court has the power to enter such an order.

Now, therefore, the Court ORDERS as follows:

Plaintiffs need not renew their request for tolling at this time because Defendants have agreed, for claims previously tolled by the pendency of the class action, to exclude from future statutes of limitations calculations the time between (i) the date of the court’s order denying class certification and (ii) the date that the Court of Appeals issues its merits-panel decision on Plaintiffs’ appeal, for actions that are filed after the date in clause (ii). This determination is without prejudice to Plaintiffs renewing their request at a future date.

All proceedings in Miscellaneous Case No. 07-489 are STAYED until February 9, 2018, by which time the parties shall submit a joint proposal or separate proposals regarding a stay beyond that date.

SO ORDERED.

  
PAUL L. FRIEDMAN  
United States District Judge

DATE: 1/8/18