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Lawyers React To Supreme Court's Alien Tort Ruling

Law360, New York (April 17, 2013, 6:35 PM ET) -- The U.S. Supreme Court on Tuesday upheld the dismissal of a suit accusing Royal Dutch Shell PLC of aiding in human rights abuses, further limiting plaintiffs' ability to bring claims against companies for actions that occur on foreign soil. Here, attorneys tell Law360 why the **unanimous ruling** in Kiobel et al. v. Royal Dutch Petroleum et al. is important.

William F. Auther, Bowman and Brooke LLP
"Although the Supreme Court moved away from the Second Circuit's easy answer — that corporate liability does not apply in [Alien Tort Statute] cases — the average corporate client has little to fear from ATS. This would be true even if the concurrence's broader interpretation of ATS one day became the majority view. Negligence and product liability, while serious allegations, are hardly the stuff from which allegations of being a 'common enemy of mankind' are made."

Konrad Cailteux, Weil Gotshal & Manges LLP
"The Supreme Court's decision in Kiobel is a good outcome for corporations in that it definitively states that the presumption against extraterritoriality applies to ATS claims and, in the specific circumstances alleged in the case, prevents plaintiffs from bringing ATS claims in United States courts. Specifically, the majority's opinion forecloses ATS claims when all of the activities take place overseas — which is the case for virtually all corporate ATS cases. Still, the court has left one important question unanswered: What activities are sufficiently domestic such that the presumption against extraterritoriality can be overcome? There is a split between the views of at least four of the more liberal justices and some of the more conservative justices. As a result, the decision does not absolutely shut the door on corporate ATS cases. Just how much the door remains open is unclear."

Lee Dunst, Gibson Dunn & Crutcher LLP
"The Supreme Court's long-awaited decision in Kiobel has provided needed guidance on limiting the jurisdictional scope of the [ATS]. In recent years, the ATS had come unmoored from its extremely limited purpose when enacted in 1789 — when it targeted torts against ambassadors and international piracy — as non-U.S. plaintiffs recently have tried to use the statute to seek redress for alleged violations of international law [that] allegedly occurred entirely outside the U.S. In Kiobel, the Supreme Court clearly shut down such statutory overreach by citing the statutory presumption against extraterritorial application to bar cases such as Kiobel, where plaintiffs seek relief under the ATS for violations of international law occurring outside the U.S. ... The Supreme Court has set a very high bar regarding what would suffice for conduct in the U.S. to overcome the presumption, noting, for example, that the mere presence of a corporation in the U.S. would not support a viable ATS suit. As such, Kiobel has provided corporate defendants with a significant defense to argue against ATS lawsuits in the future that seek to hold them liable for alleged violations of international law occurring outside the U.S."

Gregory Garre, Latham & Watkins LLP
“Today’s decision is of enormous importance for both U.S. corporations and U.S. courts. The court’s decision clarifies that the traditional 'presumption against extraterritoriality' applies to claims under the [ATS], and thus restricts the overseas reach of the law, as Congress presumably intended when it enacted the law more than 220 years ago. This will have an immediate, if not decisive, impact on numerous cases pending in the lower courts involving suits against U.S. corporations or other defendants concerning alleged events or wrongs overseas. But the decision also will help ensure that the U.S. courts avoid unintended judicial interference in the conduct of U.S. foreign policy in important areas where the political branches act. While the court divided on the rationale for its decision, what is perhaps most striking is that not a single justice believed that the ATS could be applied to the extraterritorial claim underlying the case.”

Jerry S. Goldman, Anderson Kill & Olick PC
"Sadly, the Supreme Court’s decision reflects a growing tendency of certain activist judges to reinterpret legislation to restrict the traditional broad access to American courts of victims of serious injuries. Fortunately, a majority of the justices agreed that U.S. courts can adjudicate extraterritorial actions in certain types of cases. As the world grows smaller, and participants operate globally, U.S. courts cannot allow perpetrators to use their individual locales to shield them from accountability. Given the lack of alternative forums for seeking vindication of these harms, it is critical that U.S. courts remain open and available in the pursuit of justice."

Benjamin Haglund, Day Pitney LLP
"Since the rare October 2012 reargument in Kiobel, a wide spectrum of U.S. businesses with foreign operations have been “waiting to exhale.” Those businesses -- mining, oil, pharmaceutical, and financial -- have been the subject of substantial Alien Tort Statute (“ATS”) damage claims. In light of today’s narrow ruling that the ATS does not have extraterritorial reach, those businesses will likely breathe a modest, if only temporary, sigh of relief. The narrow holding, the concurring opinions, and the submission of voluminous amicus briefs all suggest there will be continued efforts to bring claims of international law violations before U.S. Courts."

Andrew C. Hall, Hall Lamb & Hall PA
“The Supreme Court’s decision today should be accompanied by a footnote on the Statute of Liberty [that] reads, 'Give me your tired, your poor, your huddled masses, yearning to be free ... but not the claims that made them flee.' The court’s decision focuses on where America’s interests end, who should decide those interests, and what role the courts can play regarding violations of accepted norms of international law in a dispute between an alien victim and an alien tortfeasor. However, there are still remedies applicable to victims of terrorism, and courts will continue to render justice under appropriate circumstances. This decision clarifies where the line is drawn in these cases.”

Doug Hallward-Driemeier, Ropes & Gray LLP
"The biggest consequence of the Kiobel opinion is that U.S. courts won’t be developing federal common-law causes of action to govern conduct in foreign countries — litigation that often implicates the conduct of foreign governments. Congress may decide it wants to provide a forum and cause of action for some international human rights cases, but it would likely impose limits designed to limit potential international conflict, as it has under the [Trafficking Victims Protection Act]. The presumption against extraterritoriality is designed to make sure that Congress has given these issues consideration before our courts get involved in litigation with potentially significant international repercussions."

Robert Loeb, Orrick Herrington & Sutcliffe LLP
"There is no question that today's decision drastically limits corporate liability under the [ATS] for human rights violations committed abroad. The question that the decision left open, however, is whether a corporation could be liable if the injury occurred abroad but some or even most of the underlying conduct occurred in the United States. Although plaintiffs lawyers no doubt will disagree, reading this case in conjunction with Sosa v. Alvarez-Machain, defendant corporations will have a strong argument that liability should be limited to only those cases where the injury occurred in the United States."

Timothy G. Nelson, Skadden Arps Slate Meagher & Flom LLP
"Today's decision ... is a highly significant development for international law claims pending in U.S. courts. Drawing on the 2010 NAB v. Australia case as establishing a general presumption against extraterritorial application of statutes, Chief Justice [John] Roberts and the other majority justices have held that the [ATS] should be construed even more narrowly than was suggested by the [William] Rehnquist court in Sosa v. Alvarez-Marchain. From the majority's ruling, it appears that U.S. courts usually will not have ATS jurisdiction over international law claims arising from overseas events. Apart from the Nigerian claims against Royal Dutch/Shell, this will likely have an immediate and preclusive impact on several other cases pending in the U.S. courts."

Andrew Pincus, Mayer Brown LLP
"The Supreme Court's decision recognizes that Congress never authorized U.S. courts to act as the world's human rights policemen when it enacted this statute in 1789. Since the law was 'rediscovered' in 1980, scores of cases have been filed based on harm that citizens of other countries claim to have suffered outside the United States, allegedly from the acts of foreign governments — virtually all of them not suing the foreign governments [or] the foreign officials responsible for the harm, but rather seeking billions of dollars in damages from large companies on the theory that one or more businesses somehow 'aided and abetted' the foreign governments' acts. By ruling that the U.S. law applies only to conduct within the United States, the Supreme Court has eliminated a source of considerable tension between the U.S. and many of its closest friends and allies, who resented our country's assertion of worldwide jurisdiction over their citizens' acts outside of the territory of the United States. And the court has ended the long line of unjustified claims filed by plaintiffs' lawyers using the banner of 'human rights' to inflict huge litigation costs and brand damage on innocent companies — in an attempt to coerce a settlement payment regardless of the merits of the claim."

Rafael Ribeiro and Joseph Mamounas, Bilzin Sumberg Baena Price & Axelrod LLP
"In Kiobel, the Supreme Court significantly has curtailed foreign plaintiffs' access to U.S. federal courts to seek redress for injuries that occurred overseas. The Supreme Court held that the presumption against extraterritoriality applied to the [ATS] and essentially found that, to successfully invoke the ATS, the 'relevant conduct' must have taken place in the U.S. It seems, though, based on Kiobel and existing Supreme Court precedent, that the door has not been totally slammed shut where future plaintiffs can allege that, at least, some relevant, actionable facts and circumstances (i.e., the planning, financing or support for the tort) occurred in the U.S."

Kristen Ward-Broz and Michael D. Hausfeld, Hausfeld LLP
"The Kiobel decision will have a devastating impact on enforcement of fundamental human rights. In holding that the presumption against extraterritoriality applies to ATS claims, the Supreme Court closed U.S. courts to myriad victims of torture and genocide. The majority left unresolved significant questions regarding the reach of the ATS. Importantly, the majority held that ATS claims must 'touch and concern' the U.S. with 'sufficient force to displace the presumption' against extraterritoriality, but did little to clarify the standard. As Justice [Stephen] Breyer noted in his concurrence in the judgment, the U.S. has a 'distinct interest in preventing the United States from becoming a safe harbor ... for a torturer or other common enemy of mankind.' Only time will tell what U.S. interests will overcome the presumption."

--Editing by Elizabeth Bowen.