Is it the End of the Alien Tort Statute?

Today, the United States Court of Appeals for the Second Circuit entered an important decision in *Kiobel v. Royal Dutch Petroleum* regarding whether corporations may be sued under the Alien Tort Statute. The upshot of the opinion is that corporations cannot be sued under the Alien Tort State for violations of customary international law because "the concept of corporate liability . . . has not achieved universal recognition or acceptance of a norm in the relations of States with each other." Slip op. at 49.

The impact this decision will have cannot be understated. First, the decision comes out of the Second Circuit–the same circuit that started the modern era of ATS litigation in 1980 in the Filartiga case. Second, the opinion provides the most clearly articulated view, backed up with international legal analysis, concluding that corporations cannot be sued as a matter of international law. This analysis will likely be incredibly influential throughout the federal courts. Third, corporations now have the support of caselaw to dismiss ATS cases filed against them.

Given the fact that the majority of ATS litigation in recent years has been directed at corporations, this case may prove to be the end of the expansive use of the ATS. Rest assured, plaintiffs will likely seek en banc and Supreme Court review, and thus we will have to wait and see whether the Second Circuit has fired a warning shot or sounded the death knell for modern ATS litigation.