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Contractors Say No Basis For Taliban Terror Support Suit

By **Daniel Wilson**

Law360 (April 30, 2020, 8:48 PM EDT) -- Eight Afghanistan reconstruction companies urged a D.C. federal judge to toss a suit claiming that protection payments they made helped fund Taliban insurgents, saying the claims did not fit under terrorism liability law.

The plaintiffs, who either served in Afghanistan or are families of U.S. troops and contractors killed by insurgents between 2009 and 2017, had alleged that the companies regularly paid the Taliban to leave their business interests alone. But payments the companies made to subcontractors were too far removed from any insurgent attacks to plausibly support the plaintiffs' claim under the Anti-Terrorism Act, the companies told the court in individual filings on Wednesday.

One of the companies, DAI Global LLC — an international development firm — said that its work was intended to counteract the Taliban's influence, and that the plaintiffs were relying on a "blunderbuss theory" that contractors working Afghanistan regularly paid protection money to the Taliban. The plaintiffs mischaracterized government reports stating that DAI's subcontractors may have attempted to recoup protection payments extorted by the Taliban to suggest that the company supported insurgent attacks, DAI said.

"DAI would not support attacks against U.S. service members and civilian contractors — the same people who have protected and rescued DAI personnel from those insurgents," it said. "That allegation is implausible and, indeed, deeply offensive. DAI empathizes with plaintiffs' losses, but their claims distort the Anti-Terrorism Act beyond recognition."

Even if DAI's disputed subcontractor payments could be linked to insurgent attacks, they would be considered commercial, lacking the motivation of "terroristic intent" that the ATA requires, DAI said.

The December lawsuit, led by plaintiff August Cabrera, widow of U.S. Army Lt. Col. David Cabrera, effectively challenges the government's foreign policy choices regarding Afghanistan reconstruction and how they were implemented, according to DAI. However, courts don't have the authority to resolve such political questions, and in addition companies who helped carry out those policies have derivative sovereign immunity, DAI said.

The companies, which collectively received more than \$1 billion from the U.S. government for development and security work in Afghanistan, said that the insurgency victims had made conclusory allegations without specific evidence.

Environmental Chemical Corp., for example, said it was not aware of and did not intend that its payments to security firms and other subcontractors would be used to support terrorist attacks, as claimed.

The other U.S. companies named in the lawsuit are Black & Veatch Special Projects Corp., Centerra Group LLC, G4S Holdings International, Janus Global Operations LLC, and Louis Berger Group Inc.

The plaintiffs had also accused MTN Group Ltd., a South African telecommunications services provider, of coordinating with the Taliban by shutting off its cellular network at night, which interfered with the U.S.-led coalition's intelligence-gathering efforts. However, MTN argued that the

court has no jurisdiction over its actions as a foreign company doing business in a another foreign country.

Counsel for the plaintiffs did not immediately respond to a request for comment on Thursday.

The plaintiffs are represented by Joshua D. Branson, Andrew E. Goldsmith and Grace W. Knofczynski of Kellogg Hansen Todd Figel & Frederick PLLC, Ryan R. Sparacino of Sparacino PLLC, and Michael J. Gottlieb, Randall Jackson and Nicholas Reddick of Willkie Farr & Gallagher LLP.

Some plaintiffs are additionally represented by Randy D. Singer, Rosalyn K. Singer and Kevin A. Hoffman of Singer Davis LLC.

Black & Veatch is represented by Andrew M. Lankler, Brendan F. Quigley, William H. Jeffress and Vernon Cassin of Baker Botts LLP.

Centerra is represented by Tara M. Lee, Meghan A. McCaffrey and Scott E. Lerner of Quinn Emanuel Urquhart & Sullivan LLP.

DAI is represented by Kevin M. Downey, Christopher N. Manning, John M. McNichols and Brian T. Gilmore of Williams & Connolly LLP, and Robert Nichols of Nichols Liu LLP.

Environmental Chemical is represented by Mitchell R. Berger and Alexandra E. Chopin of Squire Patton Boggs.

G4S is represented by Stephen J. Obermeier, Mark B. Sweet and Todd A. Bromberg of Wiley Rein LLP.

Janus is represented by Kenneth L. Wainstein, Neil H. MacBride, Paul S. Mishkin and Adam G. Mehes of Davis Polk & Wardwell LLP.

Louis Berger is represented by Hariklia Karis, Jeffrey L. Willian, K. Winn Allen and Alexandra I. Russell of Kirkland & Ellis LLP, and David M. Nadler and Frank A. Dante of Blank Rome LLP.

MTN is represented by Timothy P. Harkness, Kimberly H. Zelnick and Scott A. Eisman of Freshfields Bruckhaus Deringer LLP, and John E. Hall, David M. Zionts and Jordan L. Moran of Covington & Burling LLP.

The case is Cabrera et al. v. Black & Veatch Special Products Corp. et al., case number 1:19-cv-03833, in the U.S. District Court for the District of Columbia.

--Editing by Adam LoBelia.