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Prospects Dim For \$105M HuffPo Bloggers Pay Suit

By **Richard Vanderford**

Law360, New York (March 09, 2012, 7:58 PM ET) -- A New York federal judge expressed doubt on Friday about OKing a \$105 million class action unpaid bloggers brought against the Huffington Post to force it to retroactively pay for their work, saying the bloggers knew the arrangement when they signed on.

U.S. District Judge John G. Koeltl, who is deciding whether to allow the case to go forward, questioned how bloggers can hope to force the online publication to pay them anything when they knew the site promised nothing.

"There was no question that when the plaintiffs submitted their pieces to the Huffington Post they had no expectation of compensation," Judge Koeltl said at a hearing in Manhattan. "They chose to give them to the Huffington Post at a time when they knew the Huffington Post was not going to pay."

The Huffington Post, which is known for its combination of news and Internet-friendly commentary, drew the ire of some contributors when it sold itself to AOL Inc. for \$315 million in 2011. Unpaid bloggers widely griped that while the publication's founder Arianna Huffington enjoyed a huge payday, they received nothing even though their work helped build her site.

Labor activist Jonathan Tasini sued on behalf of an estimated 9,000 unpaid bloggers shortly after the transaction, arguing they contributed at least \$105 million in work for which they should be compensated.

Tasini's lawyer argued Friday that the judge must look at "equity and good conscience" when he decides whether Huffington should be ordered to pay the bloggers.

"Writers get paid for their work. Writing is a vocation," Jeffrey Mead Kurzon of Kurzon LLP said, at one point comparing the publication to a Biblical-era farmer who puts a muzzle on his ox so that it cannot eat while it works to harvest grain.

"Thou shalt not muzzle the ox when it is threshing," he said.

Judge Koeltl, though he did not make a formal ruling, seemed skeptical throughout the hearing.

"There was a great judge of this court who said, 'when what you do is joy, it's not work, it's joy,'" the judge said.

The judge added that Tasini apparently did not decide that he was doing work that deserved compensation until Huffington Post was being sold for "a great deal of money."

"While the case is under advisement, we understand that Judge Koeltl will be fair and we hope that he understands our argument that the Huffington Post is only what it is because of the hard work of our clients and all the unpaid content providers," Kurzon said after the argument.

An attorney for the Huffington Post was not immediately available for comment.

The Huffington Post has maintained that it is within its rights not to pay bloggers, who the publication says agree to have their work appear on the site to generate exposure for their views, not for monetary gain.

The suit essentially asks the court for a "massive 'do-over,'" the Huffington Post said in a recent brief, which would erase long-standing agreements and hold that "competent adults cannot agree with a website to publish their submissions in exchange for nonmonetary consideration."

"But no rule of statutory or common law, in New York or elsewhere, recognizes such a remarkable and unwarranted intrusion into the relationship between publishers and contributors," the motion said.

The plaintiffs are represented by Jeffrey Mead Kurzon of Kurzon LLP.

The Huffington Post is represented by David E. Kendall, Thomas G. Hentoff and Jessica L. Brumley of Williams & Connolly LLP.

The case is *Tasini v. AOL Inc. et al.*, case number 1:11-cv-02472, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Ryan Davis. Editing by Cara Salvatore.

