SAN DIEGO--(BUSINESS WIRE)--The Honorable John S. Meyer, San Diego County Superior Court judge, ruled in favor of a class action brought by newspaper carriers against The San Diego Union Tribune ("Union Tribune") holding them to be employees entitled to reimbursement of expenses plus attorneys' fees.

On January 29, 2009, a group of newspaper carriers, represented by Daniel J. Callahan, Michael J. Sachs and Kathleen L. Dunham of Callahan & Blaine of Santa Ana, Calif., filed a class action lawsuit against the Union Tribune claiming that they were misclassified as independent contractors, when actually they should be deemed employees and entitled to reimbursement of their mileage and other expenses (*Espejo v. The Copley Press, Inc., Case No. 31-2009-00082322*).

The Court granted certification of this class on September 21, 2011, at which time discovery commenced concerning the business practices of the Union Tribune and the manner in which it treated its carriers. After nearly two years of hard fought discovery and millions of dollars in attorneys' fees were incurred, the parties commenced trial before the Honorable John S. Meyer on May 29, 2013 and continued in trial until June 18, 2013. The Court rendered its Statement of Decision on December 20, 2013, finding that the 1,235 class members (carriers) that delivered newspapers between January 29, 2005 and July 1, 2007 were in fact employees of the Union Tribune, and not independent contractors as the Union Tribune had asserted.

The key issue in the trial is whether the Union Tribune had the right to control the manner and means in which the carriers performed their service. In making the ultimate finding that the carriers were employees, the Court noted that the contract that the carriers entered, although purporting to refer to them as independent contractors, actually gave the Union Tribune extensive control over the manner and means in which the carriers performed their service.

In addition, on a daily basis the Union Tribune would give instructions to the carriers on how to perform their service. The Union Tribune also penalized the carriers by reducing their compensation if there were complaints from subscribers. To avoid complaints the Union Tribune provided intensive training and coaching of the carriers, which is a factor that would indicate employee status, not the status of an independent contractor. Likewise, the carriers could not assign their routes to another, thus the carriers did not in essence

have their own business, and the amount of each carrier's compensation was the same and non-negotiable.

Other factors the Court considered which indicated an employee vs. independent contractor status was that the Union Tribune would actually call the carriers in the morning to wake them up if they did not arrive on time, they monitored the carriers within the distribution center and gave instructions on how they should pick up their papers, assemble the papers and whether or not to bag the newspapers. The Union Tribune also conducted audits and field checks of the carriers' performance, and the Union Tribune unilaterally could change a carrier's route or require the carrier to deliver alternate publications.

The Court also found that the Union Tribune required the carriers to buy a bond and to buy auto insurance. The Court found that the carriers were not engaged in a distinct occupation or business, but rather were performing an integral part of the Union Tribune's business, i.e., the delivery of newspapers, which was another strong factor showing employee status.

The Court further found that the Union Tribune itself knew that their attempt to treat the carriers as independent contractors as opposed to employees was at best questionable, and more than likely an express admission that the Union Tribune knew it was misclassifying these carriers as independent contractors. The reason the Union Tribune attempted to misclassify the carrier as independent contractors was to avoid taxes and potential liability for carriers' accidents on the road.

The Court awarded $4,953,795 to the class as compensation for their unreimbursed expenses.

On the issue of attorneys' fees, the Court held two hearings and reviewed multiple briefs and concluded that the reasonable amount of attorneys' fees to be awarded to the class counsel, Callahan & Blaine, was $6,160,416, of that $1,250,000 will be paid out of the award to the class and the balance is ordered to be paid by the Union Tribune. The Court entered this Order for attorneys' fees on January 21, 2014.

Callahan & Blaine previously brought a similar lawsuit against the Orange County Register (*Gonzalez v. Freedom Communications, Inc., Case No. 03CC08756*) and obtained a $38 million settlement in 2009.

Callahan & Blaine has a similar class action lawsuit for misclassification of carriers commencing trial in Sacramento against the Sacramento Bee (*Sawin et al. v. The McClatchy Company et al. 34-2009-00033950-CU-OE-GDS*) on February 3, 2014 and another trial set for May against the Fresno Bee (*Becerra, et al. v. The McClatchy Company et al, Case No. 08 CE CG 04411*).

For comment concerning the trial or any of the above matters, please contact Daniel Callahan of Callahan & Blaine, (714) 241-4444 office, (949) 584-4434 cellular and e-mail address daniel@callahan-law.com .

About Callahan & Blaine

Callahan & Blaine is California's Premier Litigation Firm and one of the leading complex business litigation firms in the state of California. In the last five years, Callahan & Blaine lawyers have obtained over $1.2 billion in verdicts and settlements. Based in Orange County, Calif., Callahan & Blaine handles commercial litigation cases nationwide. For more information, visit www.callahan-law.com .