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## Brokers Headed for Sweep in Overtime Pay Cases?

By Halah Touryalai

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Stockbrokers have won their second big overtime pay case against Wall Street firms and this may only be the beginning of a rout that could cost brokerage houses many millions of dollars more.

Two weeks ago, UBS coughed up \$87 million to settle a class-action suit brought against the company by many of its brokers in California over overtime pay claims. That followed a settlement in August for \$37 million by Merrill Lynch.

Several more nearly identical California cases, including those against Citigroup, Morgan Stanley and A.G. Edwards, are still being contested and the prospects of victory for the brokers who are the plaintiffs in them look good in light of the two victories so far. Moreover, the settlements are likely to lead to more class-action cases on brokers' overtime pay in other states.


Several factors are at work. Wage and hour litigation is becoming a hot issue in the industry, according to Gerald Maatman, general editor of the annual *Workplace Class Action Litigation* report and a partner of Seyfarth Shaw in Chicago. The Administrative Office of the U.S. Courts says actions filed under the Fair Labor Standards Act, which establishes standards for minimum wage and overtime pay, have increased 86 percent between 2000 and 2004, to 3,617 across all industries. Changes in the California Labor Code, which no longer exempts brokers, has helped make the brokerage industry in the state an especially hot spot for these cases and the heat is expected to spread east.

"We're going to see a spike in class actions for broker wage and hour suits, particularly in New York and New Jersey," says Jacob Zamansky, principal at Zamansky and Associates in New York. "The success [brokers] had in California with Merrill Lynch has come east. These cases are the wave of the future, and will outnumber discriminatory cases because they are not limited to a certain group of brokers—this affects all brokers."

Maatman warns firms that "collective action litigation and class action is becoming ever more sophisticated, and will continue to be a source of significant financial exposure to employers well into the future."


The monetary value of the top 10 government-initiated settlements in 2004 totaled \$157.4 million, and in 2005 it totaled 356.2 million. Merrill Lynch's \$37 million settlement, which made it the first brokerage to settle in such a suit, was among the top 10 of plaintiff-initiated monetary settlements. With the UBS settlement jumping to more than twice the Merrill amount, the pressure for the other brokers to come to terms appears high.

"I think there will be many more settlements this year," says Mark Thierman, the lawyer who filed the cases against Merrill Lynch and UBS, and who also has cases against Smith Barney, Morgan Stanley and Banc of America. "The result will be that these firms will modify their pay structures."

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