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## Stockbrokers Unite! More Pay for Long Hours!: Ann Woolner

Sept. 17 (Bloomberg) -- Picture a stockbroker in the middle of a busy trading day hopping up on a desk and lifting a sign that says: OVERTIME!

Okay, so maybe this movie scene reworked from "Norma Rae," about a textile worker who organizes her mill, won't play out on Wall Street any time soon.

What is playing out in California courthouses are lawsuits filed by stockbrokers who say laws require brokerage houses to pay them overtime.

Accused in five separate lawsuits of shorting brokers are Merrill Lynch, Pierce, Fenner & Smith Inc.; Citigroup Global Markets Inc.; A.G. Edwards & Sons Inc.; McLaughlin, Piven, Vogel Securities Inc.; and UBS Financial Services Inc. Merrill's holding company, Merrill Lynch & Co., is a passive, minority investor in Bloomberg LP, the parent of Bloomberg News.

The suits, filed as potential class actions, will not win over the hearts of ordinary Americans, concedes one of the plaintiffs' lawyers who brought them.

"It does seem kind of silly for people making \$150,000, \$175,000 a year to be getting overtime," says Mark Thierman, one of the plaintiffs' lawyers bringing the suits.

### Firm Concern

And yet, even lawyers who represent brokerage houses acknowledge that the law just might be on the stockbrokers' side, even if public opinion isn't.

"It is something that a lot of the securities firms should be concerned about," says Tyler Paetkau, a Bingham McCutchen LLP partner in East Palo Alto, California, and chairman of the state bar association's employment law section.

Filed in state courts in San Francisco, Oakland and San Diego, the cases seek to represent California brokers who have worked in those firms within the past four years. Plus, there are claims for brokers' assistants.

If these suits work, California, which has 233,000 registered securities brokers, will only be the beginning, says Thierman.

"It's going to have an impact nationally on all brokerage firms," says Thierman, who used to defend large employers and now works as a plaintiff's lawyer in Reno, Nevada.

### 'Perversion'

Overtime pay became law during the Great Depression, when child labor and starvation wages for women textile workers led to the Fair Labor Standards Act of 1938. For every hour past 40 that eligible employees work, they are supposed to be paid 150 percent of their normal pay.

For stockbrokers to claim time and half "is a perversion of the act," Paetkau says.

Why not install time clocks at brokerage houses, asks Alan Johnson, managing director of the New York-based compensation consultancy Johnson Associates.

"They would be very embarrassed if clients knew they were portraying themselves as savant clerical workers," says Johnson.

The average annual income for a stockbroker at large New York and California firms runs about \$200,000, according to Johnson.

### The Rules

Surely high pay exempts stockbrokers from getting overtime pay, right?

Not necessarily. Federal law says that employers don't have to pay overtime to people who make more than \$100,000, but only if they are salaried, earning at least \$24,000 in guaranteed income. For stockbrokers, "The traditional model is pure commission," Johnson says.

Okay, but overtime laws can't possibly apply to salespeople who earn all or most of their living from commissions, right?

There is such a rule about commission-earning salespeople, but not for stockbrokers. Federal regulation, an opinion by a former U.S. labor commissioner and a U.S. Supreme Court ruling say brokerage houses are not exempt from paying overtime under that provision.

6:30 a.m. Bell

To win these cases, the brokerage houses will try to persuade judges to invalidate this longstanding regulation. That's exactly what UBS Financial Services Inc. is asking the judge to do in the case brought against it.

And some judges will probably agree with that position, giving the brokerage houses a shot at winning, predicts Michael Loeb, a San Francisco-based Bingham McCutchen partner.

If not, labor law provides other possibilities for firms to escape paying overtime, Loeb says. But he acknowledges none are perfect fits for stockbrokers.

These suits may appear to be exploiting legal technicalities, but the plaintiffs don't see it that way.

West Coast brokers are expected to be ready to trade by 6:30 a.m., when the opening bell rings at the New York Stock Exchange, and to call and meet clients until 7 or 8 at night and Saturday mornings, too, says Guita Bahramipour, one of the plaintiffs.

Bahramipour became a broker in 1985 at E.F. Hutton, which, after several acquisitions, is now Citigroup, which she is suing.

King's Palace

For years Bahramipour made between \$5,000 and \$12,000 annually, eventually building her income to \$200,000 by the time she went on leave in January 2001, when she had a nervous breakdown.

She was paid a 30 percent commission, so that on a \$1,000 sale, she got \$300 while her employer got \$700. And out of her share came money for clerical assistance, marketing and the independent research she sought for her clients.

``This is not like 5,000 years ago, when you would whip people to make a palace for the king," says Bahramipour, speaking from California by telephone.

The plaintiffs are asking to be reimbursed for overtime not paid, including, in some cases, an hour every day for lunch breaks not taken. They want to be reimbursed for what they've had to pay out of their own pockets to do business, and they want penalties and interest, too.

Sit Back and Collect

The brokerage houses are gearing up for a fight. Beyond seeking an invalidation of Labor Department rules, UBS for example, accuses the plaintiffs of having ``unclean hands" and of seeking recovery that would be ``unjust, arbitrary and oppressive." It has won a removal of its case from state to federal court.

If the stockbroker plaintiffs get class-action status and win the case, stockbrokers in those classes will not have to even make a call to benefit.

``If they just sit back and don't do anything, they're going to get a check," Paetkau says. California law says only if they want to get OUT do they have to take action.

``It always seemed to me that this was ripe" for a lawsuit, says John Thompson, a partner in Atlanta's Fisher & Phillips, a labor law firm that mostly represents employers.

Thompson doubts the stockbrokers will find sympathy among jurors. And yet, ``The question is, are they exempt or not?" from overtime. ``If not, it doesn't matter what they make."

Adds Thompson, ``What makes sense and what's legal isn't necessarily the same thing."

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