

TEXT OF STORY - from American Public Marketplace Audio

KAI RYSSDAL: You'd think Wall Street would be a pretty good place to work. Good pay, nice offices. But traders put in long days. Sometimes too long . . . depending on who you ask. Citigroup has agreed to pay as much as \$98 million to settle a class-action lawsuit. That's according to an attorney for the plaintiffs. They say stockbrokers should get overtime if they work more than 40 hours a week. That pretty much covers anybody in the business...the way markets are today. Wall Street firms are facing dozens of similar suits. And Marketplace's Amy Scott reports it's a fight that could transform the whole profession.

AMY SCOTT: The lawsuits raise one central question. What color is a stockbroker's collar? White or blue? One interpretation of the 1938 Fair Labor Standards Act says white. It exempts managers and professionals from overtime laws. And it exempts, "A customer's man in a brokerage house." But some argue today's stockbroker is no more than a salesperson.

MARK THIERNAN: That's what they do. They dial for dollars.

Attorney Mark Thierman says certain salespeople paid on commission are entitled to overtime pay. Thierman made a name for himself winning overtime settlements from the likes of Starbucks, Hollywood Video, and Foot Locker. In the last few years he's turned his attention to Wall Street. A few months ago UBS agreed to pay \$89 million and revise its pay system. Merrill Lynch and Morgan Stanley have both settled cases in California. Stockbrokers may seem like the last people to need the cash. But Thierman says his quest isn't really about the money.

THIERMAN: The purpose of these overtime laws is not to make individual employees more wealthy. It's to prevent the employers from letting them work more than 40 hours. We want 'em to go out and consume, we want 'em to go out and enjoy life. The fact that these people are highly compensated is a so what.

If Thierman has his way, the entire compensation system on Wall Street could change. If brokers earned a flat salary instead of commissions, they would be exempt from overtime laws. Wall Street attorney Bill Singer says employers would actually save money. He says Thierman's lawsuits could prompt them to switch to a salary system.

BILL SINGER: Secretly, they're rooting that Mark Thierman wins. Commissions generally can run from one-third to a half, depending on the firm. Now if Merrill Lynch and Smith Barney, instead of paying a million-dollar producer 30 percent, could pay that person \$75,000 or \$100,000, they would love it.

If brokerage houses moved away from commissions, they might solve another problem on Wall Street. Critics say the commission system tempts brokers to sell stocks that aren't necessarily in their clients' best interests.

CHARLES GONZALEZ: Unfortunately, yeah, that's a by-product of what happens, yeah.

Stockbroker Charles Gonzales agrees commissions don't always inspire the most ethical behavior. But he says a flat salary just wouldn't work on Wall Street.

GONZALEZ: Because if you get paid salary, it'll let you kick up your feet and relax and chill. But if you get paid commission at the beginning of the month you start at zero, you gotta get somewhere, you're gonna stay on the phone and you're gonna work. And if you gotta put in the hours, so be it.

There is another way. Some brokerage houses are moving to a fee-based system. Brokers are paid a percentage of their clients' profits, so they have an incentive to make the accounts grow. But the commission system is deeply entrenched on Wall Street.

Mark Thierman says some brokers are afraid of being associated with his lawsuits. In one settlement, only 65 percent of the eligible brokers claimed any money.

In New York, I'm Amy Scott for Marketplace.