

Matthew Goldstein

Hold the Bubbly, Wall Street

By [Matthew Goldstein](#)

Senior Writer

07/09/2003 07:10 AM EDT

URL: <http://www.thestreet.com/markets/matthewgoldstein/10098595.html>

After months of bad headlines, Wall Street finally got something to crow about last week when a federal judge tossed out two class-action suits over tainted stock research. Given the legal reasoning and the man behind the rulings, however, it's a little early to go popping champagne corks.

The judgments handed down by U.S. District Judge Milton Pollack in New York realistically amount to only the first round in what's likely to be a drawn-out legal battle with investors that could take years to resolve.

Judge Pollack left little doubt in his twin rulings that he's prepared to dismiss all 25 pending class actions that investors have filed against **Merrill Lynch** (MER:NYSE - news - commentary) . He made his feelings plainly known by dismissing the lawsuits "with prejudice" -- the judicial equivalent of a knockout blow, because it prevents a litigant from suing on those claims ever again.

Old Age

Yet there's a chance the 96-year-old jurist may never get a chance to punch out the remaining Merrill Lynch research cases.

The plaintiffs' lawyer is on record saying he'll appeal the rulings to the Second Circuit Court of Appeals. If so, all litigation in the other Merrill lawsuits will be stayed pending the outcome of the appellate court's decision. And the way things lumber along in the federal courts, it could be months before the Second Circuit issues its own verdict on Pollack's sweeping rulings.

Some legal experts believe there's a better-than-average chance Merrill Lynch could lose on appeal, because Pollack's ruling is out of step with the current thinking about Wall Street's obligation to investors. Critics contend the judge's rulings boil down to a "buyer beware" argument that flies in the face of the \$1.4 billion settlement Wall Street recently agreed to. That deal is premised on the notion that analysts have an obligation not to deliberately deceive and mislead investors.

"His reasoning is that analysts are like used-car salesmen and are not to be believed," said Jill Fisch, a securities law professor at Fordham University School of Law. "It's a plausible argument, but I think we believe the securities market will function better if people can rely on what analysts say. I don't think we want to treat analysts like used-car salesmen."

Out of Step

Judge Pollack's ruling also differs from those rendered by some of his peers in lawsuits that raise similar claims about the impact of tainted stock research.

Just six weeks ago, U.S. District Judge Denise Cote, who is presiding over the **WorldCom** securities class action, refused to dismiss a similar claim against **Citigroup** (C:NYSE - news - commentary) and the bank's former telecom analyst Jack Grubman. Judge Cote was convinced that WorldCom investors had a legitimate claim that Citigroup and Grubman had duped them by issuing "false and misleading" research reports on the telecommunication company.

"Those who choose to speak, however, must speak honestly -- not in half truths, in bad faith, or without a reasonable basis for their statements," said Judge Cote, in an 80-page ruling. (The eight remaining Citigroup analyst cases are being heard by District Judge Gerard Lynch.)

Another reason an appellate court might look to reverse Judge Pollack is that his Merrill Lynch rulings appear to limit the behavior of too many potential plaintiffs.

Most legal experts said the judge appears to be on sound legal footing in rejecting claims from investors who weren't Merrill Lynch customers, such as the plaintiffs in the suits he threw out last week. That's because it's all but impossible for a non-Merrill Lynch customer to prove he bought a tech stock after reading a research report by Henry Blodget, Merrill's former Internet guru.

But Judge Pollack may have gone too far, because his rulings also might apply to Merrill Lynch customers as well -- some of whom may very well have read one of Blodget's reports. The named defendants in the 22 other analyst class actions still before Judge Pollack are a mix of Merrill customers and non-customers. Given the sweeping language of the rulings, it's a sure bet Judge Pollack would dismiss claims brought by Merrill Lynch customers.

Compromise

Jonathan Kord Lagemann, a New York securities lawyer and a former general counsel for a small brokerage firm, said the appellate court may try to walk a fine line in the analyst cases by handing partial victories to both Merrill Lynch and investors. One possible outcome is for the appellate court to limit Judge Pollack's dismissal to investors who weren't Merrill customers but allow class actions brought by Merrill Lynch customers to proceed.

Even if the appellate court were to overturn Judge Pollack's rulings, it doesn't mean clear sailing for investors either. Motions to dismiss (like those leading to last week's dismissals) are filed at an early stage of a lawsuit, well before the plaintiffs have a chance to start taking depositions or subpoenaing documents. It's not uncommon for judges to deny a motion to dismiss, and later toss the same lawsuit because the plaintiffs can't muster enough evidence to support their allegations.

One thing is certain: Merrill Lynch lucked out when a special judicial panel tapped Judge Pollack last October to hear all of the analyst class-action cases filed against the nation's biggest brokerage.

That's because the semiretired judge had shown a strong dislike for lawsuits alleging that investors lost money on

stocks because of misleading or fraudulent research. Two years ago, he dismissed a tainted research class action brought against **Morgan Stanley** (MWD:NYSE - news - commentary) and its star Internet analyst, Mary Meeker, claiming the lawsuit was based on nothing more than news reports and "market gossip."

Judge Pollack's ruling in the Morgan Stanley case came months before New York Attorney General Eliot Spitzer revealed the results of his investigation into analyst conflicts of interest at Merrill Lynch. It was the Spitzer investigation that led to Merrill paying a \$100 million fine and spawned an even broader investigation into Wall Street's conflict of interests.

It appears the judge's thinking on blaming analysts for investors' losses hasn't changed much, despite the mountain of incriminating Wall Street emails unearthed by regulators in the past year.

In the Morgan Stanley decision, Judge Pollack described portions of the lawsuit as "hopelessly redundant, argumentative, [with] much irrelevancy and inflammatory material." He also wrote: "A complaint is not a vehicle in which to air and put in issue the views of newspapers, magazines and social engineers."

And last week Judge Pollack sounded equally dismissive in rejecting the Merrill Lynch cases: "It has not been an easy task to comb through the two prolix and unnecessarily repetitive complaints ... containing much in the way of speculation and news reports."
