

MARKET WATCH***MARKET WATCH; Wall Street's Legal Woes Aren't Over Just Yet*****By Gretchen Morgenson**

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CHEERS erupted across Wall Street on June 30 when Federal District Judge Milton Pollack in Manhattan dismissed several cases against Merrill Lynch that involved accusations that its research was tainted.

In his opinion, Judge Pollack blasted the plaintiffs as high-rollers who "now hope to twist the federal securities laws into a scheme of cost-free speculators' insurance." And he called improper the plaintiffs' submissions of e-mail messages uncovered by Eliot Spitzer, the New York attorney general, who led the investigation into Merrill Lynch, and their reliance on Mr. Spitzer's conclusions in his case. "The views of politicians and their conclusions may not properly be put on trial in this case," the judge averred.

The decision was a big victory for Wall Street in its efforts to deny responsibility for investors' loss of even some of the trillions of dollars in the technology crash of 2000. And lawyers representing investors in arbitrations say that securities firms have wasted no time entering Judge Pollack's decision into evidence.

But the opinion is no get-out-of-jail-free card for brokers. The bar that plaintiffs must clear is much lower in arbitration forums than in federal court. To win damages, plaintiffs in arbitration do not have to prove an intent to defraud. They can win on an argument that a firm's behavior was not based on equitable principles of trade.

As an arbitration case decided on July 28 in Baltimore illustrates, arbitrators are by no means falling into line behind Judge Pollack.

The case was brought by Dennis and Kathleen Quinn, a Baltimore couple who entrusted their retirement savings to a Merrill Lynch broker in 1999. Mr. Quinn, 60, was a technician at AT&T for more than 30 years but took early retirement.

Stuart D. Meissner, a New York lawyer, represented the Quinns. He said that one reason Mr. Quinn took the retirement package was that a Merrill broker assured him that he could invest the family's money profitably enough to cover their annual expenses.

The Quinns had never invested in individual stocks before and asked that their \$581,000 retirement account be managed conservatively, according to the complaint. The broker assured the Quinns that he would, it said, but soon bought them Internet stocks and special portfolios underwritten by Merrill that invested in Internet and telecommunications concerns. The stocks bought for the Quinns included the former highfliers Aether Systems, AOL, Cisco Systems, Tyco, Corning and Tellabs. By April 2000, 93 percent of their account was in stocks.

When they closed their account in June 2001, the Quinns had lost \$195,563, Mr. Meissner said. They sued Merrill, contending that it had failed to supervise its broker and that his choices were unsuitable. Mr. Quinn had to return to work.

MERRILL LYNCH argued that the Quinns had accepted the risks associated with the broker's recommendations. But the arbitration panel disagreed, awarding the Quinns \$143,000 plus interest.

Mark Herr, a Merrill spokesman, said: "We are disappointed by the panel's decision and respectfully disagree with it. This is a claim resulting from a client's dismay with losing money in the technology and telecom sectors. The legal theories were not unusual. It was pled, tried and decided as a sales practice case, not as a research case."

True. But evidence in the case included e-mail messages written by Henry Blodget, the Merrill Lynch Internet analyst, that seemed to show that his private point of view was more negative than his public assessment.

Mr. Meissner said he thinks that the e-mail helped his case. "This combination of a significant lapse of supervision with the whole research issue was very, very powerful," he said. Even ordinary suitability cases can be helped by the e-mails Mr. Spitzer released, he added.

The case is also interesting because, in the middle of it, Mr. Meissner dismissed the broker as a defendant, arguing that the liability was Merrill's. The arbitration panel agreed, stating that it would not have found the broker liable in the case.