It was a little more than 10 years ago. The market was picking up, but the tech boom hadn't really hit yet. No one had e-mail, and a blackberry was still something you found occasionally inside a slice of pie. And I was getting my first introduction to the legal profession working for someone named G. Oliver Koppell. Well, not directly for him. He was, of course, the New York State Attorney General at the time.

A lot has changed in the past 10 years. I doubt whether very many of you had any idea who G. Oliver Koppell was, or the names of either his predecessor or successor. But I'd be stunned if 99% of you or more were unfamiliar with the current occupant of the New York State Attorney General's Office. Eliot Spitzer, whether you love him or hate him, has done more for the stature of the position than any other New York State Attorney General in recent memory. But, for all the press he gets, it's the other side of the press stories – the stuff that doesn't get covered that you need to know about.

The most recent Spitzer story to hit the press involves his having reached a settlement with Millennium Partners, one of the most successful hedge fund managers. Reportedly, the deal amounts to a $180 million settlement over an alleged elaborate scheme to trade in and out of mutual funds.

This comes on the heels of another such settlement: Federated Investors Inc. just agreed to pay $100 million to settle regulatory allegations that it allowed traders to buy and sell mutual funds in ways that hurt long-term investors, including $1.6 billion in rapid trades by a hedge fund.

Spitzer began investigating the practice in 2003 after getting a tip about Canary Capital Partners LLC. "With this agreement, virtually the entire mutual fund industry has now sworn off improper trading practices and agreed to compensate investors who were harmed," Spitzer said.

That may be the truth, but it's not the whole truth. The industry may have sworn off improper trading practices, but that's like saying you swear you won't speed through red lights at school crosswalks. The mutual fund industry essentially agreed to follow the law, which, if you think about it for a minute, isn't much of a concession at all. Done properly, market timing (as opposed to late trading) is not illegal. And I'll get to the "harmed" investors in a minute.

First, while Spitzer was busy announcing his victory over the mutual fund industry, there were a few other developments. Spitzer recently dropped criminal charges against Paul Flynn, a former managing director of CI BC who was indicted and charged with alleged improper fund trading. Specifically, Flynn allegedly arranged financing for Canary Capital and Samaritan Asset Management so they could engage in illegal late trading.

Similarly, on October 12th, Spitzer dropped four charges against Theodore Sihpol, a now infamous former Bank of America broker. Sihpol did settle a civil suit with the SEC, where the SEC accused him of helping a hedge fund trade in mutual funds after hours at investors' expense, but the larger point is that Eliot Spitzer has not been the Wall Street version of Genghis Khan that he is sometimes made out to be. He's like any other litigator, only more powerful: he wins some, loses others, and settles the vast majority.

Which is why the point about the "harmed investors" is so interesting. Investors are either people or companies, and they haven't been sitting around waiting for Eliot Spitzer to dive some settlement amongst each and every one of them. When that happens, investors tend to recover far less than they lost. Investors bring private lawsuits, sometimes in court, but more often in the form of either a NYSE or NASD arbitration against the company who held their account.

But that is where another change has been taking place. Right after the tech bubble burst, it seemed like every case was about the suitability (or lack thereof) of the investments in investors' accounts, and the boiler-room based trading strategies that were typically utilized. Industry wide, it seemed that for the most part we (the securities-defense bar) were losing more than we were winning. Courts and arbitration panels both found that brokers were churning their clients' accounts, collecting unheard of commissions and only selling house stocks in which they made a market, leading to even more fees. It was relatively clear that this activity caused the investors' losses.

With time, however, the dot-com cases died out, and then came research report cases. Investors lost probably 75% of those cases. They had difficulty showing that the reason they lost money during a bear market was due to an analyst who was conflicted when issuing a research report that most investors never read anyway. Sure, Spitzer made the headlines with a big global settlement about research reports, but the "harmed investors" aren't happy.

It is even harder for them to win cases brought on improper mutual; fund trading. Courts and arbitrators barely understand what happened. The "bad activity" in 2000-crash cases was simple – brokers churned clients' accounts, trading in and out of risky dot-coms that the firm's made a market in. By way of contrast, this is how Spitzer's complaint attempts to explain what Millennium did: "[Millennium used] an elaborate fraud designed to exploit not market inefficiencies or financial arbitrage opportunities, but loopholes in the methods employed by mutual funds and others to detect and prevent [rapid trading]". And no one is arguing that Millennium's own investors were harmed.

Which leads back to Eliot Spitzer. On the one hand, the settlement by Millennium is the largest payment by a hedge fund manager in Spitzer's exhaustive investigation of allegedly improper mutual fund trading. On the other hand, I don't see any claims by any alleged "harmed investors" going very far. Millennium's founder, Israel A. Englander, will still be in charge of overseeing the hedge fund, and Millennium did not admit any wrongdoing as part of the agreement.

At the end of the day, of course, G. Oliver Koppell is now serving in the City Council as one of the Bronx council-members, and that's quite a long way from being the next Governor of New York. Clearly Spitzer has a bright future as a politician, and he will always be known as the tough-guy who cleaned up Wall Street. Which is quite a legacy for a lawyer who, like anyone else, wins some, loses others, and settles the vast majority.