

# 'Judicial award of this magnitude is unprecedented in Canada' Ontario court enforces US\$192 million American judgment

BY JENNIFER McPHEE  
Law Times

The Ontario Superior Court is making a former hazardous waste disposal company executive now living in Ontario pay more than US\$200 million to aggrieved investors.

Justice Keith Hoilett ruled that Kenneth Winger, the former CEO of the Columbia, S.C.-based Safety-Kleen Corp., will have to pay up in Ontario. Winger has been ordered by a United States court to pay investors more than US\$200 million for his role in an accounting fraud.

The March 14 Ontario judgment is believed to be the highest amount ever awarded by a Canadian court, according to Gil Zvulony of Zvulony & Co. Professional Corp. in Toronto, who represented the plaintiff class.

"To my knowledge, a judicial award of this magnitude is unprecedented in Canada," said Zvulony. "The interest alone is almost \$30,000 per day."

Investors in the securities

class action lawsuit obtained a United States court judgment in 2005 against Winger and former chief financial officer Paul Humphreys.

However, by the time of the U.S. order, the two men had moved to Canada, so investors in *State Street Research Income Trust et al. v. Winger* sought recognition and enforcement in Ontario of the US\$192-million American judgment and approximately US\$8 million in accumulated interest against Winger.

Because Humphreys has no connection to Ontario, he is being sued separately in New Brunswick.

"This decision highlights, in dramatic form, how far Canadian courts have come in recent years to recognizing and enforcing judgments from United States courts," said Zvulony.

The judgment will be enforceable for the class of investors that formed the class in the United States. The class includes State Street Research Income Trust, American High Income Trust, and all others that purchased or



**Gil Zvulony says this decision dramatically highlights how far Canadian courts have come in recognizing and enforcing U.S. judgments.**

acquired bonds issued by Safety-Kleen Corp. or its predecessor, Laidlaw Environmental Services Inc., between April 17, 1998 and March 5, 2000.

"That may or may not include Canadian investors," said Zvulony. "All of the mem-

bers of the class are not determined yet."

Hoilett endorsed the motion to enforce the foreign judgment on March 14 and granted the full relief sought because:

- Jurisdiction of the court granting the original judgment wasn't an issue.
- The original judgment was final and for a sum certain.
- The judgment was not the result of a fraud upon the court.
- There was no denial of natural justice to the responding party.
- No public policy reason was demonstrated as to why the relief sought should not be granted.

Winger, a Canadian now living in Oakville, Ont., argued that he had been denied natural justice in the process leading up to the sought enforcement of the judgment.

"The extent to which he failed to participate was the result of his own informed choice to invoke the Fifth Amendment,"

wrote Hoilett. "It does not lie in the mouth of the responding party to say he was denied the right to participate fully because of his choice to invoke the Fifth Amendment."

He noted that a similar argument was raised in *United States of America v. Levy* in 2002 and failed.

"For those same reasons, the responding party's argument on this motion must fail."

Hoilett also said there was no support in the record to support Winger's argument that he was denied an opportunity to participate in an earlier settlement process that took place between the class and other defendants.

"Equally irrelevant in my view are the responding party's arguments that he was denied the benefit of directors' insurance and that the quantum of the damages in issue are astronomical," said Hoilett.

Tanya DeAngelis of Macdonald Sager Manis LLP, litigation counsel for Winger, called the decision "unfair." **LT**