

Caldwell Cassady & Curry Secures \$8.2M Patent Win Against J&J Subsidiary

© 2018 *The Texas Lawbook*

By Natalie Posgate

(Aug. 23) – Lawyers at Dallas firm Caldwell Cassady & Curry scored an \$8.2 million patent verdict in Wisconsin against DePuy Synthes, finding that spinal products made by the Johnson & Johnson subsidiary willfully infringed on a patent first obtained by the law firm’s client, Acantha LLC, 17 years ago.

The patent (known as the ‘008 patent), invented by two Wisconsin residents, David Talaber and neurological surgeon Dr. James Lloyd, covers orthopedic implant assembly used to join bone segments.

The five-woman, three-man jury heard evidence that Talaber informed DePuy officials about the patent in writing and by phone after it was issued in 2001. Dr. Lloyd also traveled to DePuy’s Massachusetts headquarters in 2006 to explain how Acantha’s patent could help with problems DePuy experienced with its implant devices. The DePuy companies never licensed the patent.

Acantha sued DePuy in 2015, asserting that a series of the medical device manufacturer’s spine implant devices, including the Zero P VA System and Vectra, Vectra-T and Vectra-One products infringed on the ‘008 patent.

The Green Bay, Wisconsin jury deliberated for five hours before awarding \$8.2 million in actual damages to Acantha on Tuesday.

Brad Caldwell who led the trial for Acantha, said the case was rewarding because DePuy had been infringing on his client’s patent for 13 years.

“Our client is a small group of folks who were pretty reluctant to file a lawsuit; they are not litigious people,” Caldwell said.

He added that the inventors spent years “trying to work peacefully with DePuy and Johnson & Johnson” to get them to stop infringing on the patent, but “it never got them anywhere.

“I think it finally got to a point where enough was enough,” Caldwell said. “It was pretty neat working for guys who didn’t want to be in a lawsuit at all but approached it reluctantly.

There was never any doubt you were helping them set something straight that had been going wrong for a really long time.”

A group of lawyers from Jones Day’s Cleveland office represented DePuy at trial. They declined to comment on the verdict.

At a personal level, Caldwell said the case was rewarding because he enjoys working on litigation involving medical devices.

“We’ve had so many cases that are cell phone or high tech-related,” Caldwell said. “It’s exciting to work in other tech areas. The earlier [cases] I did were in medical devices and I loved it.”



Brad Caldwell



SERVING BUSINESS LAWYERS IN TEXAS

One reason Caldwell says enjoys medical device cases is the opportunity it poses to admit evidence that jurors “can hold in their hand and pass around.

“The jury sees it from every angle on the screen,” he said. “You have jurors gain a general interest in how [the device] works and it may involve someone who has one of these spinal plates... you sort of feel like everyone in the courtroom is more engaged.”

He added that the Green Bay jury was “about as attentive” as he’s ever seen in his career.

“Some of them took more notes than I’ve ever seen,” Caldwell said.

Acantha’s ‘008 patent was originally issued in 2001 before being reissued in 2011 by the U.S. Patent and Trademark Office.

In addition to Caldwell, the CCC trial team included partner Austin Curry and associates Chris Stewart, John Summers and Seth Reich.

The seven-day trial took place in the courtroom of U.S. District Judge William C. Griesbach of the Eastern District of Wisconsin.