

Skilled in the Art: Zimmer Biomet Wins \$13.3 Million Fee Award

By Scott Graham

Seven years of litigation is chicken feed for **Latham & Watkins partner David Callahan**. He's been litigating a knock-down, drag-out fight between two leading medical device makers since 2005.

Howmedica Osteonics v. Zimmer ended in a hefty \$13.3 million "exceptional case" fee award last month for Callahan's client, **Zimmer Biomet**. **U.S. District Judge William Walls' 39-page opinion** was unsealed Wednesday.

The case involved four patents held by **Stryker subsidiary**

Howmedica on a process for heating and irradiating polyethylene used in medical implants. Walls previously found three of the patents invalid for indefiniteness. Following a re-examination proceeding and **an appeal to the Federal Circuit**, the fourth also was ruled invalid.

Walls went further in his exceptional case opinion, finding that Howmedica **engaged in inequitable conduct in obtaining the patents**. The company then compounded the misconduct by taking contradictory positions between

the district court and re-examination proceedings. "To continue to pursue claims that it knew were baseless over a period of ten years amounts to litigation misconduct," Walls wrote.

Callahan, who argued the fee motion last September, was a partner at **Kirkland & Ellis** when the litigation began. Other contributors included **Latham partner Ann Marie Wahls**, **Kirkland partner Bryan Hales** and **Kirkland of counsel Bryan Rutsch**.

Howmedica was represented by **McAndrews, Held & Malloy**.