

## MVPs: Latham's Daniel Brown And Kenneth Schuler

By Kevin Stawicki

*Law360 (October 6, 2020, 3:20 PM EDT)* -- Latham & Watkins LLP's Daniel Brown and Kenneth Schuler represented specialty drug company Eagle Pharmaceuticals in several big wins and led Par Pharmaceutical to victory in an infringement suit over its Adrenalin patent, placing them among Law360's 2020 Life Sciences MVPs.

### **THEIR BIGGEST ACCOMPLISHMENT:**

The duo was part of the team representing Par in patent infringement litigation over the company's epinephrine product Adrenalin.

A Delaware federal court in 2019 upheld two patents covering Adrenalin and determined that Hospira's proposed generic version infringes them.

"It was a lot of intense science on both sides because they challenged infringement and validity," Schuler said.

While these types of cases typically get litigated in Delaware and New Jersey, a judge's retirement resulted in the case being handed over to a Nebraska federal judge. That shift came with surprises for the duo.

"It was very interesting to try a case in front of someone who I don't think had had many, if any pharmaceutical cases," Schuler said. "It was amazing to see his ability to grasp the scientific principles in a very short period of time."

Additionally, the sheer size of the litigation team meant they had to be cautious about all of the moving parts of the case, Brown said.

"We had to be very coordinated because you can't overemphasize something in one part of a case that might hurt a different part of the case you have to work as a



Daniel Brown &  
Kenneth Schuler  
Latham & Watkins

combined, coordinated unit," he said.

***WHAT MOTIVATES THEM:***

Part of what motivates the duo to keep pressing forward is the bond they developed working together and the goals they can accomplish as a team.

"We clicked right away," Schuler said of when they met nearly nine years ago.

"We had a common vision for working together to build a world-class premiere destination for pharmaceutical clients that are involved in the development of products," he said. "We are able to lean on each other."

That shared mindset and ability to execute as a team were a critical part of their recent successes, Brown said.

"It has really come to fruition this past year," he said. "We've gotten a lot of success and we've gotten very close, if not all the way to the destination that we set out to build."

***OTHER NOTABLE CASES THEY WORKED ON:***

Brown and Schuler helped guide the Latham team with partners John Manthei, Phil Perry and Gregory Garre representing Eagle in a dispute with the U.S. Food and Drug Administration over whether the regulator erroneously gave it exclusivity over its blood cancer drug Bendeka.

Eagle was able to obtain that exclusivity when the D.C. Circuit ruled in March that multiple manufacturers of a drug that treats the same rare medical condition are entitled to it. The full appeals court in August declined to disturb the ruling.

Part of the challenge in that case was navigating the interplay between the FDA's regulatory scheme and the Orphan Drug statute itself, and explaining that to a district court judge, Brown said. He added that litigating against an agency that the firm deals with regularly on behalf of their clients raised a host of challenges.

"It's different from litigating in an environment where your opponent is hostile to you," Brown said. "You have to litigate in a different way that requires a certain vigilance."

"Your advocacy to the court is very analytical, and you have to be very careful in your presentation and always be cognizant of the fact that you're litigating with your client's regulator," he continued.

The duo also represented Eagle in another high-stakes dispute over Bendeka. They convinced a Delaware federal judge to rule in April that planned generic versions of the drug from four companies infringed five patents owned by Eagle and licensed to Teva, keeping the generics off the market for over a decade.

***ADVICE FOR JUNIOR ATTORNEYS:***

"Be aggressive and show you have the ability to take on challenges," Schuler said, adding that young lawyers shouldn't be afraid to ask supervisors for responsibility.

Showing that you're a team player is a key point that young attorneys should strive to manifest, Brown said.

"Figuring out how to collaborate and form a team is a critical aspect of being a good trial lawyer," he said. "People have this idea of the lead trial counsel and minions all organized underneath, but we've never worked that way."

"I gravitate toward the team players and those who are going to work well together," Brown continued.

— *As told to Kevin Stawicki.*

*Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2020 MVP winners after reviewing more than 900 submissions.*