Schwarz in Managing IP: Haynes Boone Secures Licensing Win for Breach of Contract Claims

By Rebecca Schwarz, Joe Pinto, Leslie C. Thorne | October 9, 2025

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Managing IP recently published an article covering Haynes Boone's appellate win in Redhill Biopharma, featuring a Q&A with where they asked Associate Rebecca Schwarz about the team prepping for the case, the challenges they faced and the significance of the judgement.

Read an excerpt of the Q&A below.

How did you prepare for the legal case against Kukbo?

Our primary strategy for the case was centred on treating the pharmaceutical licensing dispute as a straightforward breach of contract case, despite opposing counsel's attempts to complicate matters with multiple counterclaims.

We repeatedly focussed on the plain language of the subscription agreement, the exclusive licence agreement, and the letter agreement, which all clearly evidenced Kukbo's breach. The lack of evidence to support Kukbo's counterclaims was also pivotal.

With respect to oral argument, the justices at the New York Appellate Division First Department are extremely well prepared and had already reviewed the papers and record before oral argument.

With this in mind, we worked to streamline and simplify our points as much as possible so that if they started asking questions straight off the bat, we would still be able to get our main point across – that Kukbo repeatedly acknowledged it breached the agreements and never alleged any breach by RedHill until after the lawsuit was filed. …

How did you put together the team that would work on this case, and how did you decide who would argue the case in court?

Leslie Thorne, the head of our firm's litigation department, put together the case team. She granted the associates on the team, Joe Pinto and me, a large amount of autonomy on case strategy, but oversaw all decisions and the overall strategy.

Ultimately, both Joe and I were able to first chair depositions and gain a tremendous amount of experience under Leslie's guidance while still ensuring a great outcome for the client.

What parts of RedHill's IP agreements helped protect the company's rights and made it easier to win and enforce the court judgment in both the US and Korea?

The agreements themselves were very clear-cut, but the specific disclaimers and merger clause ended up being decisive at the appellate court.

In its papers and at oral argument, Kukbo attempted to argue that regulatory approval was an implied condition in both the exclusive licence agreement and the subscription agreement. But the

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plain language of the agreements made it clear there was no such agreement.

I was able to point to a specific disclaimer where RedHill explicitly disclaimed any guarantee of approval or that the IP would be suitable for commercialisation, and I was able to further point to merger clauses in both the exclusive licence agreement and subscription agreement where both parties acknowledged they were only relying on the specific representations and warranties outlined in the agreement.

These clauses ended up being determinative.

What is the significance of this judgment?

This case shows that New York will continue to enforce contracts as written, using the plain language of the contract as the best evidence of the parties' intent, and will not abide parties acting in bad faith.

Read the full article from *Managing IP* here.

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