

UPDATE

July 30, 2003

REVERSING A FORTUNE: LESSONS LEARNED FROM IGEN v. ROCHE

Update

On July 15, 2003, Wiggin & Dana issued a Client Alert summarizing the recent decision of the U.S. Court of Appeals for the Fourth Circuit (the Court), reversing nearly \$490 million in damages awarded to IGEN International, Inc. after a six year legal battle with Roche Diagnostics GmbH over issues relating to a license agreement (the License Agreement). *IGEN International, Incorporated v. Roche Diagnostics GMBH et al.*, 02-1537 (4th Cir., 2003). Under the License Agreement, IGEN granted rights to Roche to develop and commercialize products comprising IGEN's proprietary electrochemiluminescence (ECL) technology.

On July 24, 2003, Roche publicly announced that it has agreed to purchase IGEN for \$1.4 billion, ending the long-standing dispute between the parties. Purchasing IGEN ensures Roche uninterrupted access to the ECL technology, which accounted for over \$400 million in sales in 2002 alone.

The Deal

Shareholders of IGEN stock will receive \$47.25 per share (a significant premium over IGEN trading prices), and one share of a new company that will own the ECL technology. The new company will incorporate other IGEN businesses such as homeland security and industrial and clinical testing. Roche anticipates spinning off the new company, which will be 100% owned by current IGEN shareholders, headquartered in Maryland (IGEN's current location), and managed by IGEN's current management.

As part of the agreement between the parties, Roche will pay IGEN \$18.6 million in damages awarded by the Court in early July, royalties on sales of Roche products for the quarter ending June 30, and a fixed fee of \$5 million per month for the use of the ECL technology until the transaction is completed. The parties anticipate closing the transaction by year end.

The Result

In exchange for the payment of a substantial premium over the value of IGEN stock, Roche ends the uncertainty surrounding its ability to develop and commercialize the ECL technology. The new company may license the ECL technology to third parties, and develop and commercialize products comprising the technology in broader fields than previously allowed under the License Agreement. The new company will not receive royalties from Roche on sales of products incorporating the ECL technology, and Roche will maintain ownership of improvements to the technology. In addition to ensuring its intellectual property and market positions related to the ECL technology, Roche improves its presence in the biodefense and industrial and clinical testing markets.

This Alert is provided for informational purposes only and does not constitute legal advice or by itself create an attorney-client relationship. For more information, please contact Jim Farrington at jfarrington@wiggin.com or Gretchen Burger at gburger@wiggin.com. [Click here](#) to obtain a copy of the July 15th Client Alert.