

David Clark and Andrea Levenson in Law360: Restrictive Covenants in California After Ixchel Pharma

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The U.S. Court of Appeals for the Ninth Circuit in *Ixchel Pharma v. Biogen* recently certified to the California Supreme Court the question whether Section 16600 of the California Business and Professions Code voids a contract under which a business is restrained from engaging in a lawful trade or business with another business. The certification was not surprising, particularly given California's aggressive approach to restrictive covenants combined with lingering questions following the 2008 seminal case of *Edwards v. Arthur Anderson LLC*.

On Aug. 3, the California Supreme Court explained that the primary dispute in *Ixchel* was not whether Section 16600 applies to business contracts (the parties ultimately agreed that it did), but rather whether contractual restraints on business operations are subject to a reasonableness standard under Section 16600.

The court therefore rephrased the certified question as follows: What is the proper standard to determine whether Section 16600 voids a contract by which a business is restrained from engaging in a lawful trade or business with another business?

The court held that a "rule of reason" applies to evaluate whether restraints on trade in business contracts are void under Section 16600. That inquiry generally asks "whether an agreement harms competition more than it helps" by considering "the facts peculiar to the business in which the restraint is applied, the nature of the restraint and its effects, and the history of the restraint and the reasons for its adoption."

Excerpted from *Law360*. To read the full article, click [here](#). (Subscription required)