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Bath v. Bushkin, 913 F.2d 817
Per Curiam

Plaintiff, Bath, brought suit against Bushkin, Gaims, Gaines and Jonas ("Bushkin"), a California partnership. Bath asserted that Bushkin violated certain federal laws, including RICO and the Securities Exchange Act. The district court dismissed the claims, stating that they were time barred. In making this determination, the district court applied a federal statute of limitations period. Bath subsequently appealed.

The Tenth Circuit affirmed in part and reversed in part. In making its determination, the court considered three issues. First, the court ruled that the proper statute of limitations for violations of Rule 10b-5 should be determined by the law of the state in which the violation occurred. Second, since the district court erred in its choice of a limitations period, the court addressed the issue of whether a private right of action exists under section 17(a) of the 1933 Securities Exchange Act. The court ruled that no private right of action exists under that section. Third, the court determined that a cause of action under RICO begins to accrue when the party learns, or should have learned, of both the "existence" and "source" of the injury, and that the injury is part of a pattern. Because the district court did not consider both injury and pattern, the court vacated that portion of the judgment and remanded for further consideration.

Blinder, Robinson & Co. v. United States, 897 F.2d 1549
Author: Judge Ebel

A warrant issued pursuant to federal securities laws authorized Internal Revenue Service agents to seize various types of transaction and sales records, as well as correspondence and memoranda from the officers of Blinder, Robinson & Company, Incorporated ("Blinder-Robinson"). Blinder-Robinson and Meyer Blinder filed an action pursuant to Fed. R. Crim. P. 41(e) for return of various business records which they alleged were illegally seized. The district court denied relief, holding that the warrant was valid and the search lawful. While appeal was pending, Meyer Blinder was indicted by a federal grand jury for securities violations. Blinder-Robinson was not indicted, however.

The Tenth Circuit dismissed Meyer Blinder's appeal for lack of jurisdiction and remanded for further proceedings to determine if Blinder-Robinson was able to satisfy the equitable requirements for a pre-indictment action under Rule 41(e). The court stated that a motion for the return of property is properly appealable only where it is not tied to a criminal prosecution *in esse* against the movant. Therefore, the court held that the appeal by Meyer Blinder should be dismissed for lack of appellate jurisdiction since it was tied to a criminal proceeding *in esse*. Since Blinder-Robinson was not indicted, however, the appeal from the district court's ruling was not tied to a criminal proceeding *in esse*, and proper appellate jurisdiction could be exercised over it. Further, since the record disclosed no findings regarding the irreparable injury and inadequate remedies at law requirements for jurisdiction over a pre-indictment Rule 41(e) motion, the case was remanded to the district court. The district court was ordered to determine if these equitable requirements for jurisdiction could be satisfied. In addition, the court noted that the mere threat of imminent indictment did not establish irreparable injury. Also, the district court was authorized by Rule 41(e) to impose reasonable conditions to protect access and use of the property in subsequent proceedings.

Cascade Energy and Metals Corp. v. Banks, 896 F.2d 1557
Author: Judge Ebel

Plaintiff, Cascade Energy and Metals Corporation ("Cascade"), owner and operator of a gold mine, brought suit seeking additional capital contributions from its investors, who asserted numerous counterclaims. Cascade appealed the district court's determination that: (1) the joint operating agreement did not permit additional assessments; (2) Cascade and its owner, Weston, breached other fiduciary duties to the investors; and (3) the affiliates of Cascade and Weston were their alter egos. Defendants, investors, challenged the district court's conclusion that: (1) Cascade and Weston did not commit fraud in the offering of interests in the mine; and (2) the interests in the mine were not securities.

The Tenth Circuit affirmed the district court's holding that the investors could not be required to make further capital contributions, and that they should be relieved from any future payments. Also, sufficient evidence existed to support the district court's finding that Weston and Cascade breached their fiduciary duties. The two determined that initial capital contributions were inadequate to put the mine into production, later concealed the fact, and made further assessments. Moreover, the court reversed the district court's decision to disregard the corporate entity under the alter ego doctrine. Accordingly, the court held Weston's and Cascade's affiliates liable for the actions committed. The court found many problems with the application of the alter ego doctrine including the observances by Weston of many corporate formalities and the absence of injustice arising from any non-observances. The court further found that the district court's determination that there was no fraud in the initial offering of interests was not clearly erroneous. Consequently, that decision was affirmed. The court did agree with the investors that the interests in the mine were securities under both federal and state law and, accordingly, reversed the district court on the issue.

Holloway v. Peat, Marwick, Mitchell & Co., 900 F.2d 1485
Author: Judge Tacha

This case arose from an order by the Supreme Court vacating the Tenth Circuit's previous judgment and remanding for further consideration. Plaintiff, Holloway, was among several plaintiffs who invested money with different banks. In return, Holloway received "thrift certificates" and "passbook savings certificates," as well as a promissory note from the banks' holding company, defendant Republic Bancorporation, Incorporated. The banks and the holding company later declared bankruptcy. The question on appeal was whether the instruments were securities within the meaning of federal securities laws.

The Tenth Circuit reaffirmed its decision. Accordingly, the court ruled that the instruments in question were governed by securities laws.