

Question

How does the 10th Circuit distinguish between the person and the enterprise under RICO?

Answer (Tenth Circuit)

Short response

The Tenth Circuit requires that the "person" who violates RICO must be distinct from the "enterprise" whose affairs that person conducts through a pattern of racketeering activity, adhering to the principle that a defendant cannot simultaneously be both the RICO person and the RICO enterprise under 18 U.S.C. § 1962(c).

Summary

The Tenth Circuit consistently interprets the [Racketeer Influenced and Corrupt Organizations Act](#) (RICO) to require a clear distinction between the "person" who conducts or participates in racketeering activity and the "enterprise" through which such activity occurs. This "distinctness requirement" stems from the statutory language of 18 U.S.C. § 1962(c), which makes it unlawful for "any person employed by or associated with any enterprise" to conduct the enterprise's affairs through racketeering activity—language that logically requires the person to be separate from the enterprise with which they are associated.

The court's approach to this distinction has evolved through numerous decisions, establishing that while a corporation cannot be both the person and the enterprise under § 1962(c), an individual employee can be the "person" while the corporation they work for serves as the "enterprise." The Tenth Circuit also requires an enterprise to have certain characteristics that distinguish it from mere individuals engaging in criminal acts, including a purpose, relationships among associates, and sufficient longevity to pursue its purpose. While this distinctness requirement is strictly applied to claims under § 1962(c), the court has recognized that the requirement may not apply with equal force to other subsections of the RICO statute.

Background and Relevant Law

The RICO Statute

The [Racketeer Influenced and Corrupt Organizations Act](#) (RICO) was enacted as part of the Organized Crime Control Act of 1970. The statute's core substantive provision, 18 U.S.C. § 1962(c), states:

"It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign

commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt," [United States v. Garcia, 793 F.3d 1194 \(10th Cir. 2015\)](#).

The statute defines "enterprise" to "include[] any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity," [U.S. v. Smith, 413 F.3d 1253, 1266 \(10th Cir. 2005\)](#). However, it's important to note that [U.S. v. Smith](#) was later overruled by [United States v. Garcia, 793 F.3d 1194 \(10th Cir. 2015\)](#) on other grounds related to jury instructions for RICO conspiracy charges, though the definition of "enterprise" remains valid.

The Distinctness Requirement

The Tenth Circuit has consistently held that "for purposes of 18 U.S.C. § 1962(c), the defendant 'person' must be an entity distinct from the alleged 'enterprise,'" [Switzer v. Coan et al., 261 F.3d 985, 992 \(10th Cir. 2001\)](#). This principle, commonly referred to as the "distinctness requirement," is "well-settled in this circuit, as in most others," [Brannon v. Boatmen's First Nat. Bank of Oklahoma, 153 F.3d 1144, 1146 \(10th Cir. 1998\)](#).

The court's reasoning for this requirement is straightforward: "The language of the statute clearly contemplates that the 'person' charged will be distinct from the 'enterprise', since a person cannot logically be 'employed by or associated with' himself," [Board of County Com'rs of San Juan County v. Liberty Group, 965 F.2d 879, 885 \(10th Cir. 1992\)](#).

This distinctness requirement has been consistently applied throughout the circuit. In [Safe Streets Alliance v. Hickenlooper, 859 F.3d 865, 882 \(10th Cir. 2017\)](#), the court reaffirmed that RICO "requires that the 'person' conducting the enterprise's affairs be distinct from the 'enterprise.'" The court cited the Supreme Court's decision in *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 160 (2001), emphasizing that "a single person cannot be both the RICO enterprise and the RICO defendant."

Enterprise Definition and Requirements

The Tenth Circuit has elaborated on what constitutes an "enterprise" under RICO. In [United States v. Kamahale, 748 F.3d 984, 1003 \(10th Cir. 2014\)](#), the court explained that an association-in-fact enterprise requires: "(1) a purpose, (2) relationships among those associated with the enterprise, and (3) longevity sufficient to permit those associated with the enterprise to pursue the enterprise's purpose."

The court noted that an enterprise may exist even without formal structures, stating that "an enterprise may exist even without a formal hierarchy, chain of command, fixed roles, a name, established rules, initiation ceremonies, or regular meetings," [United States v. Kamahale, 748 F.3d 984, 1003 \(10th Cir. 2014\)](#), citing the Supreme Court's decision in *Boyle v. United States*, 556 U.S. 938, 948 (2009).

Furthermore, the enterprise must be "an entity separate and apart from the pattern [of racketeering] in which it engages," and its existence is proven "by evidence of an ongoing organization... and by evidence that the various associates function as a continuing unit," [Carlson v. Town of Mountain Vill., Civil Action No. 17-cv-02887-PAB-STV \(D. Colo. Mar 25, 2019\)](#), citing *United States v. Turkette*, 452 U.S. 576, 583 (1981).

Analysis

The Person-Enterprise Distinction in Practice

The Tenth Circuit's application of the distinctness requirement has produced a body of case law that provides clear guidance on how to distinguish between the person and the enterprise under RICO.

Corporation as Both Person and Enterprise

One of the clearest applications of the distinctness requirement is the prohibition against a corporation being both the RICO person and the RICO enterprise under § 1962(c). In [Garbade v. Great Divide Min. and Mill. Corp., 831 F.2d 212, 213 \(10th Cir. 1987\)](#), the court dismissed RICO claims against a corporate defendant because it could not "in these circumstances be both an 'enterprise' and a 'person' within the purposes and wording of the section." The court emphasized that § 1962(c) "does not relate to corporate or enterprise liability."

Similarly, in [Skeet v. Sears, Roebuck & Co., 760 F. Supp. 872, 878 \(D. Kan. 1991\)](#), the court noted that "the Tenth Circuit Court of Appeals has recognized that a corporation cannot be both an 'enterprise' and a 'person' within the meaning of the § 1962(c)."

This principle was reaffirmed in [Mitchell v. Wells Fargo Bank, 355 F.Supp.3d 1136, 1148-1149 \(D. Utah 2018\)](#), which stated that "the Tenth Circuit has concluded that no enterprise exists when the persons and enterprise alleged were by all appearances the same."

Individual Corporate Officers and Their Corporations

While a corporation cannot be both the person and the enterprise, the Tenth Circuit has recognized that corporate employees or officers may be the "persons" while the corporation serves as the "enterprise." In [George v. Urban Settlement Servs., 833 F.3d 1242, 1249 \(10th Cir. 2016\)](#), the court cited the Supreme Court's decision in *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 163 (2001), which held that "the corporate owner/employee, a natural person, is distinct from the corporation itself, a legally different entity with different rights and responsibilities due to its different legal status."

This principle was also recognized in [Multi-Media Intern., LLC v. Promag Retail Services, 343 F.Supp.2d 1024, 1032 \(D. Kan. 2004\)](#), which stated that

"this distinctness principle is satisfied if a plaintiff alleges that a corporate employee conducted a corporation's affairs through illegal means."

Parent-Subsidiary Relationships

The Tenth Circuit has also addressed the distinctness requirement in the context of parent-subsidiary corporate relationships. In [Brannon v. Boatmen's First Nat. Bank of Oklahoma, 153 F.3d 1144, 1146-1148 \(10th Cir. 1998\)](#), the court held that merely alleging that a subsidiary is the RICO person and its parent corporation is the enterprise does not satisfy the distinctness requirement.

As noted in a subsequent case citing Brannon: "The court noted that 'expanding RICO liability because of a business organization choice makes little sense from a policy perspective.' Because RICO applies only where the defendant participates in the 'enterprise's affairs, not just its own affairs,' the Tenth Circuit held the plaintiff had alleged nothing more than a 'legitimate corporate and financial relationship between [the defendant] and its holding company,' which was insufficient under RICO," [Roberts v. C.R. Eng., Inc., Case No. 2:12-CV-00302-RJS-BCW \(D. Utah Jan 31, 2017\)](#).

Association-in-Fact Enterprises

The Tenth Circuit has provided guidance on how to identify an association-in-fact enterprise that is distinct from the persons involved in the alleged racketeering activity. In [Dugan v. State Farm Mut. Ins. Co., Case No. CIV-17-1221-R \(W.D. Okla. Apr 03, 2018\)](#), the court emphasized that proof of a pattern of racketeering activity and proof of an enterprise "may... coalesce, but proof of one does not necessarily establish the other."

The court further noted, citing *Kearney v. Dimanna*, 195 F. App'x 717, 721 (10th Cir. 2006): "In assessing whether an alleged enterprise has an ascertainable structure distinct from that inherent in a pattern of racketeering, [we] determine if the enterprise would still exist were the predicate acts removed from the equation," [Dugan v. State Farm Mut. Ins. Co., Case No. CIV-17-1221-R \(W.D. Okla. Apr 03, 2018\)](#).

This guidance helps distinguish between a legitimate enterprise that happens to engage in racketeering activity (a valid RICO claim) and a group of individuals who simply commit crimes together without forming a distinct enterprise (not a valid RICO claim).

The Operation or Management Test

The Tenth Circuit has also adopted the "operation or management" test to determine whether a defendant has conducted or participated in the conduct of the enterprise's affairs, as required by § 1962(c). In [Tal v. Hogan, 453 F.3d 1244, 1270 \(10th Cir. 2006\)](#), the court explained that "the Supreme Court has adopted the 'operation or management' test to determine whether the defendant has conducted or participated in the conduct of the enterprise by having some part in directing the affairs of the enterprise."

Under this test, "the defendants must have participated in the operation or management of the RICO enterprise, although it is not necessary for the participant to have significant control," [Tal v. Hogan, 453 F.3d 1244, 1270 \(10th Cir. 2006\)](#). This test helps distinguish between persons who are merely associated with an enterprise and those who conduct or participate in the conduct of the enterprise's affairs, further delineating the person-enterprise distinction.

Conspiracies Under § 1962(d)

The Tenth Circuit has extended the distinctness requirement to RICO conspiracy charges under § 1962(d). In [United States v. Martinez, 543 F.Supp.3d 1209 \(D. N.M. 2021\)](#), the court explained that for a RICO conspiracy conviction, "the Government must prove beyond a reasonable doubt that the defendant: (1) by knowing about and agreeing to facilitate the commission of two or more acts (2) constituting a pattern (3) of racketeering activity (4) participates in (5) an enterprise (6) the activities of which affect interstate or foreign commerce."

This approach incorporates the elements of the substantive offense under § 1962(c), including the distinctness requirement between the person and the enterprise, into the conspiracy offense under § 1962(d).

VICAR and RICO Comparison

The Tenth Circuit has also highlighted the similarities between RICO and the Violent Crimes in Aid of Racketeering (VICAR) statute, 18 U.S.C. § 1959, noting that both statutes "regulate[] enterprises, not people," [United States v. Garcia, 74 F.4th 1073 \(10th Cir. 2023\)](#). This further emphasizes the importance of the person-enterprise distinction in the court's RICO jurisprudence.

The court has noted the slightly different definitions of "enterprise" under RICO and VICAR, with RICO defining enterprise to include "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity," while VICAR employs a slightly narrower definition that requires the enterprise to be "engaged in, or the activities of which affect, interstate or foreign commerce," [United States v. DeLeon, No. CR 15-4268 JB \(D. N.M. Jan 21, 2020\)](#).

Limitations to the Distinctness Requirement

It's important to note that the Tenth Circuit's distinctness requirement applies specifically to claims under § 1962(c). In [Smith v. MCI Telecommunications Corp., 678 F.Supp. 823, 828 \(D. Kan. 1987\)](#), the court recognized that the distinctness requirement may not apply to claims under § 1962(a), which makes it unlawful for any person to use racketeering income in the operation of an enterprise.

The court stated: "We are persuaded that the better approach is to not require that the defendant/person be distinct from the enterprise [under §

1962(a)]," [Smith v. MCI Telecommunications Corp., 678 F.Supp. 823, 828 \(D. Kan. 1987\)](#). The court reasoned that "the language [of § 1962(a)] does not dictate that the entity generating racketeering income and the entity using the income in its operations be distinct."

This distinction between § 1962(c) and § 1962(a) further illustrates the nuanced approach the Tenth Circuit takes to the person-enterprise distinction under RICO, recognizing that different subsections of the statute may require different analyses.

Exceptions and Caveats

No Connection to Organized Crime Required

While RICO was originally enacted to combat organized crime, the Tenth Circuit has rejected any requirement that RICO plaintiffs must prove a connection to organized crime. In [Plains Resources, Inc. v. Gable, 782 F.2d 883, 887 \(10th Cir. 1986\)](#), the court held that "we reject the requirement that a RICO plaintiff must aver and prove that the conduct described as racketeering activity be connected to criminal conduct of an organized nature."

This means that the person-enterprise distinction under RICO applies regardless of whether the alleged racketeering activity is connected to traditional organized crime enterprises.

Proof Requirements for Enterprise

While the distinctness requirement is firm, the Tenth Circuit has noted that proving the existence of an enterprise does not always require extensive evidence. In [United States v. Kamahale, 748 F.3d 984, 1003 \(10th Cir. 2014\)](#), the court acknowledged that "[a]n enterprise may exist even without a formal hierarchy, chain of command, fixed roles, a name, established rules, initiation ceremonies, or regular meetings."

Furthermore, the court has recognized that "the proof used to establish [enterprise and pattern of racketeering activity] may in particular cases coalesce, proof of one does not necessarily establish the other," [U.S. v. Smith, 413 F.3d 1253, 1266 \(10th Cir. 2005\)](#), citing *United States v. Turkette*, 452 U.S. 576, 583 (1981). Again, it should be noted that *Smith* was later overruled by *Garcia* on other grounds, but this particular principle remains valid.

This means that while the person and enterprise must be distinct, the evidence used to prove their existence and the relationships between them may overlap in some cases.

Conclusion

The Tenth Circuit's approach to distinguishing between the person and the enterprise under RICO is marked by a consistent application of the

distinctness requirement, especially for claims under § 1962(c). This requirement stems from the statutory language itself, which contemplates that the "person" conducting or participating in the enterprise's affairs must be distinct from the "enterprise" with which they are associated.

Several key principles emerge from the Tenth Circuit's jurisprudence:

1. A corporation cannot be both the person and the enterprise under § 1962(c).
2. Individual officers or employees of a corporation can be the "persons" while the corporation serves as the "enterprise."
3. Merely alleging participation within a corporate structure, such as a parent-subsidiary relationship, is not enough to satisfy the distinctness requirement.
4. An association-in-fact enterprise must have a purpose, relationships among its associates, and sufficient longevity to pursue its purpose.
5. The enterprise must have an ascertainable structure distinct from the pattern of racketeering activity.
6. A defendant must have some part in directing the affairs of the enterprise under the "operation or management" test.
7. The distinctness requirement applies to conspiracy charges under § 1962(d).
8. The distinctness requirement may not apply to claims under § 1962(a).

These principles provide clear guidance for courts and practitioners in the Tenth Circuit when analyzing RICO claims and ensure that the statute's focus on enterprises, rather than individuals acting alone, is maintained. The court's approach balances the need to combat organized criminal activity with the recognition that RICO should not be expanded beyond its statutory boundaries.

In summary, the Tenth Circuit's distinction between the person and the enterprise under RICO reflects a thoughtful interpretation of the statute's language and purpose, providing a framework that has remained consistent over decades of jurisprudence while adapting to various factual scenarios and corporate structures.

Legal Authorities

[Brannon v. Boatmen's First Nat. Bank of Oklahoma, 153 F.3d 1144 \(10th Cir. 1998\)](#)

U.S. Court of Appeals — Tenth Circuit

Extract

It is well-settled in this circuit, as in most others, that for purposes of 18 U.S.C. § 1962(c), the defendant 'person' must be an entity distinct from the alleged 'enterprise.' See *Board of County Comm'rs v. Liberty Group*, 965 F.2d 879, 885 & n. 4 (10th Cir.1992) (citing cases); see also David B. Smith & Terrance G. Reed, *Civil RICO* p 3.07, at 3-77 to 3-78 & nn. 2 & 3 (1998).

Summary

The passage clearly states that within the Tenth Circuit, for a RICO claim under 18 U.S.C. § 1962(c), the defendant identified as the "person" must be distinct from the "enterprise." This distinction is a well-settled principle in the Tenth Circuit, aligning with the majority of other circuits. This requirement ensures that the entity accused of conducting racketeering activities (the "person") is separate from the entity through which the activities are conducted (the "enterprise").

[Johnson v. Heath, 56 F.4th 851 \(10th Cir. 2022\)](#)

U.S. Court of Appeals — Tenth Circuit

Extract

Plaintiff brought a RICO claim under 18 U.S.C. §§ 1962(c) and 1964(c) against Defendant Michael Heath. Section 1962(c) prohibits 'any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, [from] conduct[ing] or participat[ing], directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity.'

Summary

The passage provides insight into how the Tenth Circuit interprets the distinction between a "person" and an "enterprise" under RICO. It specifies that a "person" is someone who is employed by or associated with an "enterprise" and who conducts or participates in the conduct of the enterprise's affairs through a pattern of racketeering activity. This distinction is crucial in RICO cases, as it separates the individual or entity responsible for the racketeering activity from the enterprise through which the activity is conducted.

[George v. Urban Settlement Servs., 833 F.3d 1242 \(10th Cir. 2016\)](#)

U.S. Court of Appeals — Tenth Circuit

Extract

We recognize that § 1962(c) requires that the "person" conducting the enterprise's affairs be distinct from the "enterprise." Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158, 160, 121 S.Ct. 2087, 150 L.Ed.2d 198 (2001) ; see Bd. of Cty. Comm'rs of San Juan Cty. v. Liberty Grp., 965 F.2d 879, 885 & n.4 (10th Cir. 1992) (collecting cases and noting predominant view that § 1962(c) "require[s] that the 'person' and the 'enterprise' engaged in racketeering activities be different entities"). And we further recognize that a plaintiff must demonstrate that the defendant conducted

the affairs of the enterprise rather than simply conducting the defendant's own affairs.

Summary

Under § 1962(c) of RICO, the "person" who conducts the enterprise's affairs must be distinct from the "enterprise" itself. This distinction is crucial in RICO cases to ensure that the entity conducting the racketeering activities is separate from the entity that constitutes the enterprise. The Tenth Circuit emphasizes that a plaintiff must show that the defendant was conducting the affairs of the enterprise, not merely its own affairs. This requirement is consistent with the broader interpretation of RICO across various jurisdictions.

[United States v. Garcia, 793 F.3d 1194 \(10th Cir. 2015\)](#)

U.S. Court of Appeals — Tenth Circuit

Extract

Defendants were charged under RICO, 18 U.S.C. § 1962(d), with conspiring to violate 18 U.S.C. § 1962(c). Section 1962(c) states: It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

Summary

The passage provides insight into how the Tenth Circuit views the relationship between a person and an enterprise under RICO. It highlights that a person must be employed by or associated with an enterprise that is engaged in or affects interstate or foreign commerce. The person must conduct or participate in the conduct of the enterprise's affairs through a pattern of racketeering activity. This distinction is crucial in understanding the separate roles of the individual and the enterprise in RICO cases.

[U.S. v. Smith, 413 F.3d 1253 \(10th Cir. 2005\)](#)

U.S. Court of Appeals — Tenth Circuit

Extract

A RICO enterprise 'includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.' 18 U.S.C. § 1961(4). In *United States v. Turkette*, 452 U.S. 576, 583, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981), the Supreme Court held that a RICO enterprise 'is proved by evidence of an

ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit.' The Court also emphasized that the concepts of an enterprise and a pattern of racketeering activity are distinct, stating that '[w]hile the proof used to establish these separate elements may in particular cases coalesce, proof of one does not necessarily establish the other.' Id.

Summary

Clear distinction between a person and an enterprise under RICO by defining what constitutes an enterprise and emphasizing the separation between the enterprise and the pattern of racketeering activity. This distinction is crucial in RICO cases to ensure that the entity being prosecuted is indeed an enterprise as defined by law, separate from the individual actions of a person.

[United States v. DeLeon, No. CR 15-4268 JB \(D. N.M. Jan 21, 2020\)](#)

U.S. District Court — District of New Mexico

Extract

RICO states that an enterprise 'includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.' 18 U.S.C. § 1961. VICAR employs a slightly narrower definition of the term 'enterprise' such that it 'includes any partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, which is engaged in, or the activities of which affect, interstate or foreign commerce.' 18 U.S.C. § 1959(b). 'An association-in-fact requires: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit those associated with the enterprise to pursue the enterprise's purpose.' *United States v. Kamahele*, 748 F.3d 984, 1003 (10th Cir. 2014).

Summary

The passage provides definitions of "enterprise" under RICO and VICAR, highlighting the distinction between a person and an enterprise. Under RICO, an enterprise can be an individual or a group associated in fact, while VICAR requires the enterprise to affect interstate commerce. The Tenth Circuit, as seen in *United States v. Kamahele*, requires an association-in-fact to have a purpose, relationships, and longevity. This distinction is crucial in RICO cases to separate the individual actions from those of the enterprise.

[Board of County Com'rs of San Juan County v. Liberty Group, 965 F.2d 879 \(10th Cir. 1992\)](#)

U.S. Court of Appeals — Tenth Circuit

Extract

As the jury instructions and the predominant view in the cases make clear, under § 1962(c) it is required that the 'person' and the 'enterprise' engaged in racketeering activities be different entities. See *Garbade v. Great Divide Mining and Milling Corp.*, 831 F.2d 212, 213 (10th Cir.1987). The district court took the position that the verdict against Liberty Group was supported by the evidence that Liberty Group itself was the enterprise. Memorandum Opinion and Order at 7-8. We are persuaded that this was error under the cases cited. The language of the statute clearly contemplates that the 'person' charged will be distinct from the 'enterprise', since a person cannot logically be 'employed by or associated with' himself. If Liberty Group is found to have violated RICO, liability under § 1962(c) must be based on Liberty Group's association with some entity separate from itself.

Summary

The Tenth Circuit requires that under RICO, the "person" and the "enterprise" must be distinct entities. This distinction is necessary because a person cannot be "employed by or associated with" themselves. The court found that the district court erred in considering Liberty Group as both the person and the enterprise, emphasizing that liability under § 1962(c) must involve an association with a separate entity.

[Safe Streets Alliance v. Hickenlooper, 859 F.3d 865 \(10th Cir. 2017\)](#)

U.S. Court of Appeals — Tenth Circuit

Extract

The Marijuana Growers appear to suggest that these allegations are insufficient because the Reillys also alleged that the corporate defendants were separate, smaller RICO enterprises. So far as it goes, they are correct that RICO 'requires that the 'person' conducting the enterprise's affairs be distinct from the 'enterprise.' ' George, 833 F.3d at 1249 (citing *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 160, 121 S.Ct. 2087, 150 L.Ed.2d 198 (2001)). That is, 'a single person cannot be both the RICO enterprise and the RICO defendant.' *RJR*, 136 S.Ct. at 2104 (citing *Cedric*, 533 U.S. at 162, 121 S.Ct. 2087).

Summary

The passage clearly outlines the requirement under RICO that the 'person' conducting the enterprise's affairs must be distinct from the 'enterprise' itself. This distinction is crucial in RICO cases to ensure that a single entity is not both the defendant and the enterprise, which aligns with the precedent set by *Cedric Kushner Promotions, Ltd. v. King*.

[United States v. Garcia, 74 F.4th 1073 \(10th Cir. 2023\)](#)

U.S. Court of Appeals — Tenth Circuit

Extract

VICAR, like RICO, 'regulates enterprises, not people.' *Waucaush v. United States*, 380 F.3d 251, 255 (6th Cir. 2004). The statute defines 'enterprise' to 'include[] any partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, which is engaged in, or the activities of which affect, interstate or foreign commerce.' 18 U.S.C. § 1959(b)(2). In turn, '[a]n association-in-fact requires: (1) a purpose, (2) relationships among those associated with the enterprise, and (3) longevity sufficient to permit those associated with the enterprise to pursue the enterprise's purpose.' *United States v. Kamahele*, 748 F.3d 984, 1003 (10th Cir. 2014) (emphasis added).

Summary

Both VICAR and RICO statutes focus on regulating enterprises rather than individuals. It provides a definition of "enterprise" under 18 U.S.C. § 1959(b) (2), which includes various forms of legal entities and associations. The passage further explains the requirements for an "association-in-fact," which include a purpose, relationships among those associated, and sufficient longevity to pursue the enterprise's purpose. This distinction is crucial in understanding how the Tenth Circuit interprets the separation between individuals and the enterprises they may be part of under RICO.

[Roberts v. C.R. Eng., Inc., Case No. 2:12-CV-00302-RJS-BCW \(D. Utah Jan 31, 2017\)](#)

U.S. District Court — District of Utah

Extract

The RICO statute makes it unlawful for 'any person employed by or associated with any enterprise... to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.' Interpreting the statute, federal courts have held that 'the defendant 'person' must be an entity distinct from the alleged 'enterprise.'... For example, in *Brannon v. Boatmen's First National Bank*, the Tenth Circuit concluded that the plaintiffs could not proceed on a claim arising under § 1962(c). The plaintiffs alleged the defendant, a subsidiary, participated in an enterprise consisting of its parent corporation. The Tenth Circuit held that merely alleging participation within a corporate structure was not enough to satisfy the distinctness requirement because a 'parent corporation, as a matter of corporate reality, is nothing more than the controlling shareholder of a

subsidiary.' The court noted that 'expanding RICO liability because of a business organization choice makes little sense from a policy perspective.' Because RICO applies only where the defendant participates in the 'enterprise's affairs, not just its own affairs,' the Tenth Circuit held the plaintiff had alleged nothing more than a 'legitimate corporate and financial relationship between [the defendant] and its holding company,' which was insufficient under RICO.

Summary

The passage explains that under RICO, the defendant 'person' must be distinct from the 'enterprise.' The Tenth Circuit, in *Brannon v. Boatmen's First National Bank*, emphasized that a mere corporate structure, such as a parent-subsidiary relationship, does not satisfy the distinctness requirement. The court highlighted that RICO liability should not be expanded based on business organization choices and that the defendant must participate in the enterprise's affairs, not just its own. This interpretation is crucial for understanding how the Tenth Circuit distinguishes between the person and the enterprise under RICO.

[Tal v. Hogan, 453 F.3d 1244 \(10th Cir. 2006\)](#)

U.S. Court of Appeals — Tenth Circuit

Extract

18 U.S.C. § 1962(c) makes it illegal 'for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity. . . .' To survive a Rule 12(b)(6) motion, a civil RICO claim must allege the defendants (1) participated in the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Cayman Exploration Corp.*, 873 F.2d at 1362; see *Sedima, S.P.R.L.*, 473 U.S. at 496, 105 S.Ct. 3275. The Supreme Court has adopted the 'operation or management' test to determine whether the defendant has conducted or participated in the conduct of the enterprise by having some part in directing the affairs of the enterprise. *Reves v. Ernst & Young*, 507 U.S. 170, 179, 113 S.Ct. 1163, 122 L.Ed.2d 525 (1993). 'For liability to be imposed under that test, the defendants must have participated in the operation or management of the RICO enterprise,' *BancOklahoma Mortgage Corp.*, 194 F.3d at 1100, 'although it is not necessary for the participant to have significant control.' *Resolution Trust Corp.*, 998 F.2d at 1541(internal quotation omitted).

Summary

The passage provides insight into how the Tenth Circuit distinguishes between the person and the enterprise under RICO by explaining the requirements for a civil RICO claim. It highlights the necessity for a person

to be distinct from the enterprise and to have participated in the operation or management of the enterprise's affairs through a pattern of racketeering activity. The "operation or management" test is crucial in determining whether the defendant has conducted or participated in the conduct of the enterprise.

[Plains Resources, Inc. v. Gable, 782 F.2d 883 \(10th Cir. 1986\)](#)

U.S. Court of Appeals — Tenth Circuit

Extract

In sum, the language and history of the statute and the guidance from the Court in *Sedima* and other courts cause us to reject the requirement that a RICO plaintiff must aver and prove that the conduct described as racketeering activity be connected to criminal conduct of an organized nature.

Summary

The Tenth Circuit does not require a RICO plaintiff to prove that racketeering activity is connected to organized crime. This suggests that the court distinguishes between the person and the enterprise by focusing on the statutory language and legislative intent, rather than requiring a connection to traditional organized crime. The court emphasizes that RICO's applicability is broader and not limited to traditional criminal organizations.

[Grider v. Texas Oil & Gas Corp., 868 F.2d 1147 \(10th Cir. 1989\)](#)

U.S. Court of Appeals — Tenth Circuit

Extract

18 U.S.C. Sec. 1962(c). The courts generally agree that the language of this section does not permit the person who conducts the affairs of an enterprise through racketeering activity to be one and the same as that enterprise. See, e.g., *Garbade v. Great Divide Mining & Milling Corp.*, 831 F.2d 212, 213 (10th Cir.1987); *Schreiber Distrib. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1396 (9th Cir.1986); *Morgan v. Bank of Waukegan*, 804 F.2d 970, 977 (7th Cir.1986). Under this construction, a corporation that conducts its own affairs through racketeering activity is not within the ambit of section 1962(c).

Summary

A corporation cannot be both the person and the enterprise under this section, which is a critical distinction in RICO cases.

[Torwest DBC, Inc. v. Dick, 810 F.2d 925 \(10th Cir. 1987\)](#)

U.S. Court of Appeals — Tenth Circuit

Extract

Section 1962(c), the substantive RICO violation at issue here, states that... A violation of section 1962(c) thus 'requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985).

Summary

Elements required for a RICO violation under section 1962(c), which includes the conduct of an enterprise through a pattern of racketeering activity. This implies a distinction between the "person" conducting the activity and the "enterprise" through which the activity is conducted. The person is the individual or entity engaging in the conduct, while the enterprise is the structure or organization through which the racketeering activity is carried out.

[Skeet v. Sears, Roebuck & Co., 760 F. Supp. 872 \(D. Kan. 1991\)](#)

U.S. District Court — District of Kansas

Extract

The court finds that plaintiff has failed to allege the existence of an 'enterprise' separate and distinct from the persons or defendants alleged to have violated § 1962(c). ... The court further notes that courts generally have held that under § 1962(c), the person and the enterprise must be distinct. *Smith v. MCI Telecommunications Corp.*, 678 F.Supp. 823, 827 (D.Kan.1987) (citations omitted). Moreover, the Tenth Circuit Court of Appeals has recognized that a corporation cannot be both an 'enterprise' and a 'person' within the meaning of the § 1962(c).

Summary

For a RICO claim under § 1962(c), the Tenth Circuit requires the "enterprise" to be distinct from the "person" alleged to have violated RICO. This means that a corporation cannot simultaneously be considered both the "enterprise" and the "person" conducting racketeering activities. This distinction is crucial for establishing a valid RICO claim in the Tenth Circuit.

[Dugan v. State Farm Mut. Ins. Co., Case No. CIV-17-1221-R \(W.D. Okla. Apr 03, 2018\)](#)

U.S. District Court — Western District of Oklahoma

Extract

Plaintiffs have not pled a plausible enterprise. They allege extensive criminal conduct, perhaps sufficient to constitute a 'pattern of racketeering activity,' with nothing to tie Defendants together. 18 U.S.C. § 1962(c); 18 U.S.C. § 1961(5). Plaintiffs do not allege a common purpose, nor do they plead a relationship between Defendants, comprised of insurance companies, hospitals, state and municipal actors, and federal agencies. Instead, the complaint appears to employ RICO as an improper means of skirting the statute of limitations by merging Plaintiffs' often-unrelated injuries—over a decade of alleged sickness, abuse, contamination, and cover-ups committed by countless actors—into one ongoing violation. Granted, proof of a pattern of conduct and proof of an enterprise 'may... coalesce,' but 'proof of one does not necessarily establish the other.' *United States v. Turkette*, 452 U.S. 576, 583 (1981) ('The 'enterprise' is... an entity separate and apart from the pattern of activity in which it engages.'). *Crowe v. Clark*, 552 F. App'x 796, 800 (10th Cir. 2014) (unpublished); *Kearney v. Dimanna*, 195 F. App'x 717, 721 (10th Cir. 2006) (quoting *Handeen v. Lemaire*, 112 F.3d 1339, 1352 (8th Cir.1997)) ('In assessing whether an alleged enterprise has an ascertainable structure distinct from that inherent in a pattern of racketeering, [we] determine if the enterprise would still exist were the predicate acts removed from the equation.').

Summary

The passage provides insight into how the Tenth Circuit distinguishes between a person and an enterprise under RICO. It emphasizes that an enterprise must have an ascertainable structure distinct from the pattern of racketeering activity. The enterprise should exist independently of the predicate acts of racketeering. This distinction is crucial in determining whether a RICO claim is valid, as the enterprise must be separate from the criminal conduct itself.

[Andersen-Myers Co., Inc. v. Roach, 660 F.Supp. 106 \(D. Kan. 1987\)](#)

U.S. District Court — District of Kansas

Extract

Defendant Roach claims that he is not a person within the meaning of 18 U.S.C. § 1962(c), and therefore cannot be sued for a RICO violation. 'Person' is defined as 'any individual or entity capable of holding a legal or beneficial interest in property.' 18 U.S.C. § 1961(3) (1982)... Defendant Roach extends his argument to the more general question as to whether a state agency can be the 'enterprise' through which racketeering activity is conducted... It will suffice here to note that the definition of enterprise 'unambiguously encompasses governmental units.'

Summary

The passage provides insight into how the court interprets the definitions of "person" and "enterprise" under RICO. It clarifies that a "person" under RICO is any individual or entity capable of holding a legal or beneficial interest in property, and that an "enterprise" can include governmental units. This distinction is crucial in determining who can be sued under RICO and what entities can be considered as conducting racketeering activity.

[Multi-Media Intern., LLC v. Promag Retail Services, 343 F.Supp.2d 1024 \(D. Kan. 2004\)](#)

U.S. District Court — District of Kansas

Extract

Section 1962(c) requires that 'the `person' and the `enterprise' engaged in racketeering activities be different entities.' Bd. of County Comm'rs v. Liberty Group, 965 F.2d 879, 885 (10th Cir.1992) (citation omitted). This distinctness principle is satisfied if a plaintiff alleges that a corporate employee conducted a corporation's affairs through illegal means. See Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158, 163, 121 S.Ct. 2087, 150 L.Ed.2d 198 (2001) ('The corporate owner/employee, a natural person, is distinct from the corporation itself, a legally different entity with different rights and responsibilities due to its different legal status. And we can find nothing in the statute that requires more `separateness' than that.');

Ad-X Int'l, Inc. v. Kolbjornsen, 97 Fed. Appx. 263, 266 (10th Cir.2004) (citations and internal citations omitted) ('Indeed, because the enterprise must be separate from the pattern of racketeering activity itself, ... and distinct from the person engaging in it, ... RICO requirements are most easily satisfied when the enterprise is a formal legal entity').

Summary

The passage clearly outlines the requirement under 18 U.S.C. § 1962(c) that the "person" and the "enterprise" must be distinct entities in a RICO claim. This principle is supported by the Tenth Circuit's decision in Bd. of County Comm'rs v. Liberty Group and further explained by the U.S. Supreme Court in Cedric Kushner Promotions, Ltd. v. King. The passage also notes that this distinctness is most easily satisfied when the enterprise is a formal legal entity, as per Ad-X Int'l, Inc. v. Kolbjornsen.

[Mitchell v. Wells Fargo Bank, 355 F.Supp.3d 1136 \(D. Utah 2018\)](#)

U.S. District Court — District of Utah

Extract

But '§ 1962(c) requires that the 'person' conducting the enterprise's affairs be distinct from the 'enterprise.'" George, 833 F.3d at 1249 (citing *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 160, 121 S.Ct. 2087, 150 L.Ed.2d 198 (2001)). 'It is insufficient to identify 'simply the group of defendants accused of engaging in the racketeering' as the enterprise.' *Spence v. Basic Research*, No. 2:16-CV-925-CW, 2018 WL 1997310, at *2 (D. Utah Apr. 27, 2018) (quoting *Switzer v. Coan*, 261 F.3d 985, 992 (10th Cir. 2001)). 'The Tenth Circuit Court of Appeals has said that the distinction requirement means that the 'person' and 'enterprise' must 'be different entities.'" *Id.* (quoting *Bd. of Cty. Comm'rs of San Juan Cty. v. Liberty Grp.*, 965 F.2d 879, 885 (10th Cir. 1992)). Indeed, 'the Tenth Circuit has concluded that no enterprise exists when the persons and enterprise alleged were by all appearances the same.'

Summary

The passage clearly outlines the Tenth Circuit's requirement that under RICO, the 'person' and the 'enterprise' must be distinct entities. This distinction is crucial for a valid RICO claim, as the court has dismissed claims where the alleged persons and enterprise were the same.

[Edwards v. First Nat. Bank, Bartlesville, Oklahoma, 872 F.2d 347 \(10th Cir. 1989\)](#)

U.S. Court of Appeals — Tenth Circuit

Extract

Similarly, in *Condict v. Condict*, 815 F.2d 579 (10th Cir.1987), we held that a family dispute over a family ranching operation amounted, at most, to a garden variety fraud case, and did not fit the RICO mold entitling the injured party to treble damages. Our reasoning was that the facts did not meet the 'continuity requirement' commented on in *Torwest* or the 'conduct of an enterprise through a pattern of racketeering activity' requirement of 18 U.S.C. Sec. 1962(c) discussed in footnote 14 in *Sedima*.

Summary

The passage references the case of *Condict v. Condict*, where the Tenth Circuit held that a family dispute did not meet the RICO requirements because it did not demonstrate the "continuity requirement" or the "conduct of an enterprise through a pattern of racketeering activity" as required by 18 U.S.C. Sec. 1962(c). This indicates that the Tenth Circuit requires a clear distinction between the individual (person) and the enterprise, with the latter needing to be involved in a pattern of racketeering activity that shows continuity and is not merely a sporadic or isolated incident.

[United States v. Martinez, 543 F.Supp.3d 1209 \(D. N.M. 2021\)](#)

U.S. District Court — District of New Mexico

Extract

In *United States v. Smith*, the Tenth Circuit held that a defendant can be convicted of a RICO conspiracy under § 1962(d) 'upon proof that the defendant knew about or agreed to facilitate the commission of acts sufficient to establish a [18 U.S.C.] § 1962(c) violation.' The Tenth Circuit incorporated the elements of the substantive offense under § 1962(c) into § 1962(d)'s definition, saying: '[W]e hold that in order to convict a defendant for violating § 1962(d), the Government must prove beyond a reasonable doubt that the defendant: (1) by knowing about and agreeing to facilitate the commission of two or more acts (2) constituting a pattern (3) of racketeering activity (4) participates in (5) an enterprise (6) the activities of which affect interstate or foreign commerce.'

Summary

The passage from *United States v. Martinez* provides insight into how the Tenth Circuit distinguishes between the person and the enterprise under RICO. It highlights that for a RICO conspiracy conviction under § 1962(d), the government must prove that the defendant participated in an enterprise whose activities affect interstate or foreign commerce. This indicates a distinction between the individual (the person) and the collective entity (the enterprise) involved in racketeering activities.

[Brannon v. Boatmen's Bancshares, Inc., 952 F.Supp. 1478 \(W.D. Okla. 1997\)](#)

U.S. District Court — Western District of Oklahoma

Extract

In Count I, paragraph 58(a), plaintiffs also allege that the defendant corporate person Boatmen's operated a pattern of racketeering activity through an enterprise identified as Bancshares. Also, in Count II, paragraph 65(b), plaintiffs allege that Bancshares was the person that conducted a pattern of racketeering through Boatmen's and other subsidiaries. These allegations raise the question of whether a corporate person can be distinct from its subsidiary corporations or its parent corporation. A number of courts have recognized that a corporation is not distinct from its subsidiaries for RICO purposes.

Summary

Issue of whether a corporate person can be distinct from its subsidiaries or parent corporation under RICO. It highlights that courts have recognized that a corporation is not distinct from its subsidiaries for RICO purposes.

This is relevant to understanding how the 10th Circuit might approach the distinction between the person and the enterprise under RICO, as it suggests that the corporate structure and relationships are critical in determining the separateness required by RICO.

[Carlson v. Town of Mountain Vill., Civil Action No. 17-cv-02887-PAB-STV \(D. Colo. Mar 25, 2019\)](#)

U.S. District Court — District of Colorado

Extract

An enterprise is 'an entity separate and apart from the pattern [of racketeering] in which it engages,' and its existence is proven 'by evidence of an ongoing organization... and by evidence that the various associates function as a continuing unit.' *United States v. Turkette*, 452 U.S. 576, 583 (1981); see also *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Kozeny*, 115 F. Supp. 2d 1210, 1227 (D. Colo. 2000) (applying federal case law construing RICO to COCCA). The enterprise must 'function as a continuing unit with an existence beyond that necessary to commit the predicate acts and have an identity distinct from that of the individual [d]efendants.' *Nat'l Union*, 115 F. Supp. 2d at 1227.

Summary

The passage provides insight into how the Tenth Circuit, through the application of federal case law, distinguishes between a person and an enterprise under RICO. It emphasizes that an enterprise must be an entity separate from the pattern of racketeering and must function as a continuing unit with an identity distinct from the individual defendants. This distinction is crucial in RICO cases to establish that the enterprise is not merely a collection of individuals committing predicate acts but a separate entity with its own structure and purpose.

[Wade v. Gaither, 623 F.Supp.2d 1277 \(D. Utah 2009\)](#)

U.S. District Court — District of Utah

Extract

To establish liability under § 1962(c), 'one must allege and prove the existence of two distinct entities: (1) a 'person'; and (2) an 'enterprise' that is not simply the 'person' referred to by a different name.' ... The Tenth Circuit has not yet decided the issue explicitly, though it has addressed similar matters. In *Ad-X Int'l, Inc. v. Kolbjornsen*, 97 Fed.Appx. 263, 266 (10th Cir.2004), however, the Court found that a bankruptcy estate and the estate's debtor should be considered legally distinct, and could constitute a RICO enterprise and person respectively.

Summary

The passage provides insight into how the Tenth Circuit approaches the distinction between a "person" and an "enterprise" under RICO. It emphasizes the necessity of proving two distinct entities and references a specific case, *Ad-X Int'l, Inc. v. Kolbjornsen*, where the court found a bankruptcy estate and its debtor to be legally distinct entities. This suggests that the Tenth Circuit requires a clear separation between the person and the enterprise for RICO claims, although it has not explicitly decided the issue in all contexts.

[Garbade v. Great Divide Min. and Mill. Corp., 831 F.2d 212 \(10th Cir. 1987\)](#)

U.S. Court of Appeals — Tenth Circuit

Extract

The complaint further alleges that the corporate defendant, Great Divide, violated 18 U.S.C. Sec. 1962(c). The trial court dismissed the corporation on the ground that it could not in these circumstances be both an 'enterprise' and a 'person' within the purposes and wording of the section. We must agree. Section 1962(c) makes it unlawful for a 'person' to enter the activities of an 'enterprise' using racketeering activities. References are to 'employed by' and 'associated with.' The section does not relate to corporate or enterprise liability.

Summary

The Tenth Circuit distinguishes between a "person" and an "enterprise" under RICO by emphasizing that a corporation cannot simultaneously be both the "person" and the "enterprise" in the context of Section 1962(c). This section specifically targets the unlawful conduct of a "person" who is "employed by" or "associated with" an "enterprise" through racketeering activities, and does not address corporate or enterprise liability directly.

[Switzer v. Coan et al., 261 F.3d 985 \(10th Cir. 2001\)](#)

U.S. Court of Appeals — Tenth Circuit

Extract

It is well-settled in this circuit, as in most others, that for purposes of 18 U.S.C. 1962(c), the defendant 'person' must be an entity distinct from the alleged 'enterprise.'

Summary

The passage clearly states the legal principle that, under RICO, the defendant 'person' must be distinct from the 'enterprise.' This distinction is crucial for establishing a RICO claim under 18 U.S.C. 1962(c). The Tenth Circuit follows this principle, which is consistent with the majority of other circuits. This indicates that in RICO cases, the 'person' accused of racketeering must be separate from the 'enterprise' through which the racketeering activity is conducted.

[Smith v. MCI Telecommunications Corp., 678 F.Supp. 823 \(D. Kan. 1987\)](#)

U.S. District Court — District of Kansas

Extract

We are persuaded that the better approach is to not require that the defendant/person be distinct from the enterprise. Such an approach comports with the language of subsection (a) and the definitions of section 1961. Section 1961 defines a person to include a corporate defendant such as MCI, and it defines an enterprise to include a corporation. See 18 U.S.C. § 1961(3), (4). Section 1962(a) makes it unlawful for any person, here MCI, to use racketeering income in the operation of any enterprise engaged in interstate commerce, again, here MCI. The language does not dictate that the entity generating racketeering income and the entity using the income in its operations be distinct.

Summary

The passage from the Smith v. MCI Telecommunications Corp. case provides insight into how the Tenth Circuit approaches the distinction between the person and the enterprise under RICO, specifically under 18 U.S.C. § 1962(a). The court concluded that the person and the enterprise need not be distinct entities under this subsection. This interpretation aligns with the language of the statute and the definitions provided in section 1961, which include corporations as both persons and enterprises. This approach is intended to further the purposes of RICO by allowing actions against corporations that use racketeering income in their operations, even if they are the same entity generating that income.

[United States v. Kamahale, 748 F.3d 984 \(10th Cir. 2014\)](#)

U.S. Court of Appeals — Tenth Circuit

Extract

The term “enterprise” “includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals

associated in fact although not a legal entity.” 18 U.S.C. § 1961(4) (2006). An association-in-fact requires: (1) a purpose, (2) relationships among those associated with the enterprise, and (3) longevity sufficient to permit those associated with the enterprise to pursue the enterprise's purpose. See *Boyle v. United States*, 556 U.S. 938, 946, 129 S.Ct. 2237, 173 L.Ed.2d 1265 (2009). An enterprise may exist even without a formal hierarchy, chain of command, fixed roles, a name, established rules, initiation ceremonies, or regular meetings. *Id.* at 948, 129 S.Ct. 2237. To qualify as an enterprise under RICO, the association need only be a “continuing unit that functions with a common purpose.” *Id.*; see *United States v. Turkette*, 452 U.S. 576, 583, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981) (concluding that an association-in-fact enterprise constitutes a “group of persons associated together for a common purpose of engaging in a course of conduct”).

Summary

Detailed explanation of what constitutes an "enterprise" under RICO, as interpreted by the Tenth Circuit. It distinguishes an enterprise from a person by defining it as a group or association with a common purpose, relationships among its members, and sufficient longevity. This definition is crucial in differentiating the enterprise from the individuals involved, as the enterprise is seen as a separate entity that can exist without formal structures.

[Racketeer influenced and corrupt organizations.](#)

**American Criminal Law Review - Georgetown University Law Center -
Bourgeois, Richard L., Jr. - 2000-03-22**

Extract

Brannon v. Boatmen's First Nat. Bank of Oklahoma, 153 F.3d 1144, 1147-48 (10th Cir. 1998) (holding that allegation that a subsidiary is the RICO 'person' and a parent is the enterprise, does not sufficiently state a RICO claim)

Summary

Specific example of how the Tenth Circuit approaches the distinction between a RICO "person" and a RICO "enterprise." In the case of *Brannon v. Boatmen's First Nat. Bank of Oklahoma*, the court held that simply alleging that a subsidiary is the RICO "person" and a parent is the "enterprise" is insufficient to state a RICO claim. This indicates that the Tenth Circuit requires a clear distinction between the entity acting as the "person" and the entity acting as the "enterprise" under RICO.

[Racketeer influenced and corrupt organizations.](#)

**American Criminal Law Review - Georgetown University Law Center -
Bagley, Ross - 2007-03-22**

Extract

To establish liability under 1962(c), a plaintiff must prove the existence of two distinct entities: (i) a 'person,' and (ii) an 'enterprise' that is not simply the same 'person' referred to by a different name. (319) The Supreme Court has elaborated on this distinction, holding that '[an] employee, a natural person, is distinct from the corporation itself, a legally different entity with different rights and responsibilities due to its different legal status.' (320)

Summary

Clear explanation of the requirement under RICO to distinguish between the "person" and the "enterprise." It emphasizes that these must be two distinct entities, as clarified by the Supreme Court, which is a principle applicable across jurisdictions, including the Tenth Circuit.

[Racketeer Influenced and Corrupt Organizations Act.](#)

**American Criminal Law Review - Georgetown University Law Center -
Bailey, Lisa Pritchard - 1999-06-22**

Extract

See, e.g., Brannon v. Boatman's First Nat'l Bank, 153 F.3d 1144, 1146 (10th Cir. 1998) (holding that under [sections] 1962(c), RICO person and enterprise must be separate)

Summary

The passage specifically addresses the requirement under section 1962(c) of the RICO Act, as interpreted by the Tenth Circuit, that the RICO person and the enterprise must be distinct entities. This interpretation is crucial for understanding how the Tenth Circuit applies the RICO statute in cases involving allegations of racketeering.

[Racketeer influenced and corrupt organizations.](#)

**American Criminal Law Review - Georgetown University Law Center -
Allison, Bridget - 1998-03-22**

Extract

Board of County Comm'rs v. Liberty Group, 965 F.2d 879, 885 (10th Cir. 1992) (holding that under [sections] 1962(c), RICO person and enterprise must be separate)

Summary

The passage from the document provides a direct reference to a case decided by the Tenth Circuit, *Board of County Comm'rs v. Liberty Group*, which establishes the requirement that under section 1962(c) of RICO, the person and the enterprise must be distinct entities. This indicates that the Tenth Circuit adheres to the principle that a RICO defendant (the "person") cannot be the same entity as the RICO enterprise. This distinction is crucial for establishing liability under RICO in the Tenth Circuit.

[Racketeer influenced and corrupt organizations.](#)

American Criminal Law Review - Georgetown University Law Center - Douglass, Sean M. - 2011-03-22

Extract

To establish liability under [section] 1962(c), a plaintiff must prove the existence of two distinct entities: (i) a 'person' and (ii) an 'enterprise' that is separate and distinct from the 'person.' (325) The Supreme Court has elaborated on this distinction, holding that '[an] employee, a natural person, is distinct from the corporation itself, a legally different entity with different rights and responsibilities due to its different legal status.' (326)

Summary

Clear explanation of the requirement under RICO section 1962(c) that there must be two distinct entities: a "person" and an "enterprise." The Supreme Court's elaboration further clarifies that an individual, such as an employee, is distinct from a corporation, which is a separate legal entity. This distinction is crucial in RICO cases to establish liability, ensuring that the "person" and "enterprise" are not the same entity.

[Reflections on *Reves v. Ernst & Young*: its meaning and impact on substantive, accessory, aiding abetting and conspiracy liability under RICO.](#)

American Criminal Law Review - Georgetown University Law Center - Blakey, G. Robert - 1996-01-01

Extract

3. Application of Person-Enterprise Rule to Associations-in-fact: Under [sections] 1962(c), the 'person' and 'enterprise' must be separate.(23) The enterprise-person rule may not be circumvented by pleading respondeat superior, aiding and abetting, or conspiracy.(24)

Summary

The passage provides insight into the requirement under RICO that the "person" and "enterprise" must be distinct entities. This distinction is crucial in RICO cases to ensure that the same entity is not improperly considered both the perpetrator and the victim or target of the racketeering activity. The passage also clarifies that this rule cannot be bypassed by using legal doctrines such as respondeat superior, aiding and abetting, or conspiracy.

[Civil Rico: A Tool of Advocacy](#)

The Brief - American Bar Association - 2024-01-01

Extract

Section 1962(c) requires that the "person" who violates this section must be distinct from the "enterprise" whose affairs that person is allegedly conducting or participating in. It is because only the person and not the enterprise can be liable under § 1962(c). The person and enterprise must be separate entities. The violator of § 1962(c) who commits the pattern of predicate racketeering acts must be distinct from the enterprise of predicate racketeering acts whose affairs are thereby conducted.

Summary

Clear explanation of the legal requirement that the person and enterprise must be separate entities, which is a fundamental aspect of RICO claims under § 1962(c).

[Santos v. Delta Airlines, Inc.](#)

USDOL Administrative Review Board Decisions

Extract

RICO, 18 U.S.C. § 1962(c), prohibits 'any person employed by or associated with any enterprise engaged in ... interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity.' The statute thus requires the plaintiff to allege an enterprise, the conduct of the affairs of the enterprise through a pattern of racketeering activity, and injury to [its] business or property ... caused by the violation of Section 1962.

Summary

The passage provides insight into the statutory requirements under RICO, specifically 18 U.S.C. § 1962(c). It distinguishes between the "person" and the "enterprise" by indicating that RICO prohibits any person associated

with an enterprise from conducting the enterprise's affairs through a pattern of racketeering activity. This implies that the "person" is the individual or entity engaged in the racketeering activity, while the "enterprise" is the entity whose affairs are being conducted through such activity. The statute requires a clear distinction between the two, as the person must be separate from the enterprise to establish a RICO violation.

[Defending Civil RICO Claims: A Defense Plan Should Be In Every Business's Arsenal](#)

Extract

Fourth, for most RICO claims, the plaintiff also must plead that the alleged 'person' and 'enterprise,' as defined in RICO, are distinct. While often technical, this 'distinctiveness' requirement provides that a corporation generally will not be liable for operating an 'enterprise' consisting of itself and its officers or employees. If a business is alleged to have violated RICO based on intracompany actions, then the RICO claim has a good chance of dismissal.

Summary

The passage explains the distinctiveness requirement under RICO, which is crucial for distinguishing between the "person" and the "enterprise." This requirement mandates that the "person" (the defendant) and the "enterprise" (the entity through which the racketeering activity is conducted) must be distinct entities. This is a general principle under RICO law and is applicable in the Tenth Circuit as well as other circuits. The passage specifically notes that a corporation cannot be both the "person" and the "enterprise" if it consists solely of itself and its officers or employees, which would lead to dismissal of the RICO claim.

[RICO: A Primer](#)

Extract

A plaintiff is required to demonstrate that the defendant conducted the affairs of an enterprise through a pattern of racketeering activity. The person and the enterprise generally must be distinct; but, of course, a Rico person can be a part of an enterprise.

Summary

The passage from the document provides a clear explanation that under RICO, the person and the enterprise must generally be distinct entities. However, it also acknowledges that a RICO person can be a part of an enterprise. This distinction is crucial in RICO cases to ensure that the person accused of racketeering is not conflated with the enterprise itself,

which is a separate entity through which the racketeering activity is conducted.

[Defending Civil RICO Claims: A Defense Plan Should Be In Every Business's Arsenal](#)

Extract

Fourth, for most RICO claims, the plaintiff also must plead that the alleged 'person' and 'enterprise,' as defined in RICO, are distinct. While often technical, this 'distinctiveness' requirement provides that a corporation generally will not be liable for operating an 'enterprise' consisting of itself and its officers or employees. If a business is alleged to have violated RICO based on intracompany actions, then the RICO claim has a good chance of dismissal.

Summary

The Tenth Circuit, like other jurisdictions, requires a clear distinction between the "person" and the "enterprise" in RICO claims. This distinctiveness requirement is crucial because it prevents a corporation from being held liable for RICO violations if the alleged enterprise consists solely of the corporation and its officers or employees. This requirement is a common defense against RICO claims, especially when the alleged violations are based on intracompany actions.

[RICO: A Primer](#)

Extract

A plaintiff is required to demonstrate that the defendant conducted the affairs of an enterprise through a pattern of racketeering activity. The person and the enterprise generally must be distinct; but, of course, a Rico person can be a part of an enterprise.

Summary

Under RICO, the person and the enterprise must generally be distinct entities. This means that while a RICO person can be part of an enterprise, they cannot be the enterprise itself. This distinction is crucial in RICO cases to ensure that the person is not simply the enterprise in disguise, which would undermine the purpose of the statute.

This memo was compiled by Vincent AI based on vLex materials available as of June 10, 2025. [View full answer on vLex](#)