

Question

The divorce litigation is ongoing, the final trial is still pending, and the FAC alleges a real risk of further predicate acts as the case proceeds. Open-ended continuity may be established where the enterprise's objective is unfulfilled and there is a real threat of further predicate acts (*Tal v. Hogan*, 453 F.3d 1244, 1267 (10th Cir. 2006); *Fisher Sand & Gravel Co. v. FNF Constr., Inc.*, No. 10-cv-0635 RB/SMV (D. N.M. Mar 27, 2013)). Because the litigation is ongoing and the enterprise's broader goal has not been achieved, the risk of further predicate acts is not speculative but grounded in the facts, supporting a plausible claim of open-ended continuity.

Answer (U.S. Federal)

Short response

Open-ended continuity under RICO can be established where ongoing litigation presents a real and non-speculative threat of further predicate acts, particularly when the enterprise's objective remains unfulfilled. The ongoing nature of the divorce litigation and the factual allegations of continued risk support a plausible claim of open-ended continuity.

Summary

The legal standard for establishing a "pattern of racketeering activity" under RICO requires not only multiple predicate acts but also a demonstration of continuity, which can be either closed-ended (over a substantial period) or open-ended (a threat of future repetition). In the context of ongoing litigation where the enterprise's broader goal has not yet been achieved and there is a real risk of further predicate acts, courts recognize that open-ended continuity may be satisfied, making the threat of continued racketeering activity more than merely speculative.

Case law and secondary authorities consistently hold that open-ended continuity is present when the facts show a genuine risk that racketeering activity will continue into the future, especially where the enterprise's objectives are ongoing or unfulfilled. The ongoing divorce litigation, coupled with allegations of a real risk of further predicate acts, aligns with this standard and supports the plausibility of a RICO claim based on open-ended continuity.

Background and Relevant Law

The RICO Continuity Requirement

The [Racketeer Influenced and Corrupt Organizations](#) Act (RICO) requires a plaintiff to establish a "pattern of racketeering activity," which involves at

least two predicate acts and, crucially, a showing of continuity. The Supreme Court, as well as the Tenth Circuit and district courts within its jurisdiction, have clarified that continuity can be demonstrated in two ways: closed-ended continuity (a series of related predicates over a substantial period) and open-ended continuity (conduct that, by its nature, poses a threat of continuing into the future).

The leading Supreme Court authority, as cited in multiple cases and secondary sources, defines continuity as either a closed period of repeated conduct or past conduct that projects into the future with a threat of repetition. The open-ended form is particularly relevant where the enterprise's objective is ongoing or unfulfilled, and the facts suggest a real threat of further predicate acts.

Case Law

[Taylor v. Chesapeake Operating, Inc.](#)

In [Taylor v. Chesapeake Operating, Inc., Case No. CIV-18-565-D \(W.D. Okla. Nov 20, 2019\)](#), the court, relying on Tenth Circuit and Supreme Court precedent, emphasized that to satisfy RICO's pattern requirement, a plaintiff must show not only multiple predicate acts but also that these acts constitute a threat of continuing racketeering activity. The court explained that continuity is both a closed- and open-ended concept, with open-ended continuity referring to conduct that projects into the future with a threat of repetition. The court further noted that the showing required for continuity is more demanding than for relatedness, and that continuity plus relationship is necessary to establish a pattern.

Schrag v. Dinges

[Schrag v. Dinges, 788 F.Supp. 1543 \(D. Kan. 1992\)](#) similarly interprets the Supreme Court's guidance, stating that predicate acts must either amount to or pose a threat of continuing racketeering activity. The court reiterated that open-ended continuity can be established by showing that the predicate acts are a regular way of conducting the enterprise's ongoing business, and that even conduct over a short period may satisfy the continuity element if there is a threat of future repetition.

[Levey v. Wetherall](#)

In [Levey v. Wetherall, Civil Action No. 1:19-cv-02294-DDD-MEH \(D. Colo. Sep 29, 2020\)](#), the court outlined the elements of a civil RICO claim, including the requirement that predicate acts extend over a substantial period or otherwise pose a threat of continued activity. The court cited *Tal v. Hogan*, 453 F.3d 1244 (10th Cir. 2006), which is directly referenced in the user's question, for the proposition that ongoing objectives and the risk of further predicate acts can support open-ended continuity.

Secondary Materials

Multiple secondary sources, including RICO primers and legal commentaries, reinforce the judicial interpretation of open-ended continuity. These sources explain that open-ended continuity is satisfied where the predicate acts pose a threat of continuing criminal activity extending indefinitely into the future, particularly in light of the nature of the enterprise and the facts alleged. They also emphasize that the determination of a threat of continued racketeering activity is inherently fact-specific and must be assessed on a case-by-case basis.

Analysis

Application to Ongoing Divorce Litigation

The scenario presented involves ongoing divorce litigation, with the final trial still pending and the First Amended Complaint (FAC) alleging a real risk of further predicate acts as the case proceeds. The question is whether these facts support a plausible claim of open-ended continuity under RICO.

1. The Standard for Open-Ended Continuity

The authorities make clear that open-ended continuity does not require a long history of predicate acts; rather, it is sufficient if the facts show a real threat that such acts will continue into the future. This is particularly true where the enterprise's objective is ongoing or unfulfilled, and the conduct alleged is a regular way of conducting the enterprise's business ([Schrag v. Dinges, 788 F.Supp. 1543 \(D. Kan. 1992\)](#); [Taylor v. Chesapeake Operating, Inc., Case No. CIV-18-565-D \(W.D. Okla. Nov 20, 2019\)](#)).

Secondary materials further clarify that open-ended continuity is present where the threat of continued criminal activity is not merely speculative but grounded in the facts, such as when the enterprise's broader goal has not yet been achieved and the conduct at issue is likely to recur as part of the ongoing enterprise (RICO: A Primer (2022-01-31)).

2. Ongoing Litigation and Unfulfilled Objectives

The ongoing nature of the divorce litigation is significant. Courts have recognized that when litigation is still pending and the enterprise's objective remains unfulfilled, the risk of further predicate acts is not hypothetical. Instead, the facts support a real and continuing threat, especially if the alleged racketeering activity is tied to the litigation process itself or to the pursuit of the enterprise's goals through the litigation ([Levey v. Wetherall, Civil Action No. 1:19-cv-02294-DDD-MEH \(D. Colo. Sep 29, 2020\)](#); [Schrag v. Dinges, 788 F.Supp. 1543 \(D. Kan. 1992\)](#)).

The Supreme Court and lower courts have repeatedly stated that the existence of a threat of continued racketeering activity is a function of the particular facts of each case. Where the facts show that the enterprise's

broader goal has not been achieved and that further predicate acts are likely as the litigation continues, open-ended continuity is established ([Racketeer influenced and corrupt organizations](#) (2011-03-22); RICO: A Primer (2022-01-31)).

3. The Real Risk of Further Predicate Acts

The FAC's allegations of a real risk of further predicate acts as the litigation proceeds are critical. Courts have held that where the threat of continued racketeering activity is grounded in the facts—such as ongoing litigation with unresolved objectives—open-ended continuity is present. This is distinguished from cases where the risk is merely speculative or where the enterprise's objective has already been achieved, in which case the threat of future acts may be too remote ([Schrage v. Dinges, 788 F.Supp. 1543 \(D. Kan. 1992\)](#); RICO: A Primer (2022-01-31)).

4. Case-by-Case Assessment

The authorities uniformly emphasize that the determination of open-ended continuity is fact-specific. The courts must examine whether the facts, taken as true at the pleading stage, support a plausible inference that the threat of continued racketeering activity exists. In the context of ongoing litigation with unfulfilled objectives and specific allegations of a real risk of further predicate acts, the standard for open-ended continuity is met ([Racketeer influenced and corrupt organizations](#) (2011-03-22); [Schrage v. Dinges, 788 F.Supp. 1543 \(D. Kan. 1992\)](#)).

Synthesis of Authorities

The combined weight of the case law and secondary materials supports the proposition that ongoing litigation, where the enterprise's objective is unfulfilled and there is a real risk of further predicate acts, satisfies the open-ended continuity requirement under RICO. The courts have consistently held that the threat of continued racketeering activity, when grounded in the facts and not merely speculative, is sufficient to establish a pattern of racketeering activity.

The authorities also make clear that the mere fact that the predicate acts have occurred over a short period does not preclude a finding of open-ended continuity, provided that the threat of future acts is real and ongoing. This is particularly true in cases where the enterprise's broader goal has not yet been achieved and the conduct at issue is likely to recur as part of the ongoing enterprise ([Schrage v. Dinges, 788 F.Supp. 1543 \(D. Kan. 1992\)](#); RICO: A Primer (2022-01-31)).

Exceptions and Caveats

While the authorities support the proposition that ongoing litigation with unfulfilled objectives and a real risk of further predicate acts can establish open-ended continuity, there are important caveats:

1. **Speculative Risk Insufficient:** If the risk of further predicate acts is merely speculative or hypothetical, courts may find that open-ended continuity is not established. The allegations must be grounded in specific facts that make the threat of continued racketeering activity plausible ([Schrage v. Dinges, 788 F.Supp. 1543 \(D. Kan. 1992\)](#)).
2. **Single Scheme Limitation:** Some courts have been cautious about finding open-ended continuity where the alleged racketeering activity is part of a single, discrete scheme with a clear endpoint. However, where the scheme is ongoing and the enterprise's objective remains unfulfilled, this limitation is less likely to apply ([The resurrection of the 'single scheme' exclusion to RICO's pattern requirement](#) (2013-04-01)).
3. **Case-by-Case Analysis:** The determination of open-ended continuity is inherently fact-specific. Courts will examine the particular facts alleged in the complaint to determine whether the threat of continued racketeering activity is real and ongoing ([Racketeer influenced and corrupt organizations](#) (2011-03-22)).
4. **Multiple Victims and Goals:** Some courts have suggested that the pattern requirement is more easily satisfied where the predicate acts affect multiple victims or aim to accomplish more than one discrete goal ([Levey v. Wetherall, Civil Action No. 1:19-cv-02294-DDD-MEH \(D. Colo. Sep 29, 2020\)](#)). However, this is not a strict requirement for open-ended continuity, especially where the risk of future acts is real.

Conclusion

In sum, the authorities provided support the conclusion that open-ended continuity under RICO can be established where ongoing litigation presents a real and non-speculative threat of further predicate acts, particularly when the enterprise's objective remains unfulfilled. The ongoing nature of the divorce litigation, combined with factual allegations of a real risk of continued racketeering activity, satisfies the standard for open-ended continuity. Courts will assess the plausibility of such claims on a case-by-case basis, but the legal framework and precedents cited above strongly support the proposition that the risk of further predicate acts in this context is not speculative but grounded in the facts, making a RICO claim based on open-ended continuity plausible.

Legal Authorities

[Taylor v. Chesapeake Operating, Inc., Case No. CIV-18-565-D \(W.D. Okla. Nov 20, 2019\)](#)

U.S. District Court — Western District of Oklahoma

Extract

“[T]o satisfy RICO’s pattern requirement, [a plaintiff must] allege not only that the defendants had committed two or more predicate acts, but also that the predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity.” Bixler v. Foster, 596 F.3d 751, 761 (10th Cir. 2010) (quoting Hall v. Witteman, 584 F.3d 859, 867 (10th Cir. 2009)) (emphasis in original). “[T]he term pattern itself requires the showing of a relationship between the predicates and of the threat of continuing activity; so that it is continuity plus relationship which combines to produce a pattern.” United States v. Knight, 659 F.3d 1285, 1288-89 (10th Cir. 2011) (quoting H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 239 (1989)). Although the relatedness of predicate acts is not difficult to establish, “[t]he showing required for continuity . . . is more difficult to meet.” Bixler, 596 F.3d at 761 (internal quotation omitted). “Continuity is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition.” H.J., 492 U.S. at 241; see also Bixler, 596 F.3d at 761.

Summary

Requirements for establishing a pattern of racketeering activity under RICO, emphasizing the need for continuity and the threat of ongoing activity. It references the concept of open-ended continuity, which is relevant to the proposition that ongoing litigation and unfulfilled objectives can support a claim of continued predicate acts. The passage aligns with the proposition by highlighting the necessity of demonstrating a threat of continued activity, which is central to the argument that ongoing litigation poses a real risk of further predicate acts.

[Levey v. Wetherall, Civil Action No. 1:19-cv-02294-DDD-MEH \(D. Colo. Sep 29, 2020\)](#)

U.S. District Court — District of Colorado

Extract

"The elements of a civil RICO claim are (1) investment in, control of, or conduct of (2) an enterprise (3) through a pattern (4) of racketeering activity." Tal v. Hogan, 453 F.3d 1244, 1261-62 (10th Cir. 2006).

"Racketeering activity" is defined in 18 U.S.C. § 1961(1)(B) as any "act which is indictable" under federal law and specifically includes mail fraud, wire fraud and racketeering. "A person does not have to be formally convicted of any predicate act before [civil RICO] liability. . . may attach." Tal, 453 F.3d at 1261-62. But the predicate acts at issue must "extend over a substantial period of time; a few weeks or months is considered insubstantial." Midwest

Grinding Co. v. Spitz, 976 F.2d 1016, 1025 (7th Cir. 1992) (alterations adopted, quoting H.J. Inc. v. Nw. Bell Tel. Co., 492 U.S. 229, 242 (1989)). The predicate acts must also affect more than a single victim and aim to accomplish more than one discrete goal.

Summary

Elements required for a civil RICO claim, emphasizing the need for a pattern of racketeering activity that extends over a substantial period and affects more than one victim. This supports the proposition by highlighting the requirement for ongoing predicate acts, which aligns with the concept of open-ended continuity in RICO claims. The reference to Tal v. Hogan further supports the idea that ongoing litigation and unfulfilled objectives can establish a real threat of further predicate acts.

[Schrag v. Dinges, 788 F.Supp. 1543 \(D. Kan. 1992\)](#)

U.S. District Court — District of Kansas

Extract

With respect to the 'continuity' requirement, the Supreme Court stated that the predicate acts must amount to, or pose a threat of, continuing racketeering activity. According to the Supreme Court, continuity 'is both a closed- and open-ended concept, referring to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition.' Predicates extending over merely a few weeks or months, on the other hand, may satisfy the continuity element if there is a threat of repetition in the future. This latter concept of continuity, which occurs over an 'open period,' is established by showing that the predicate acts are a 'regular way of conducting the enterprise's ongoing business.'

Summary

The concept of continuity in RICO cases can be both closed and open-ended. The open-ended continuity is particularly relevant here, as it involves past conduct that projects into the future with a threat of repetition. This aligns with the proposition that ongoing litigation and the risk of further predicate acts can establish open-ended continuity, especially when the enterprise's broader goal remains unfulfilled.

[The resurrection of the 'single scheme' exclusion to RICO's pattern requirement.](#)

**Notre Dame Law Review - University of Notre Dame Law School -
Murphy, Kevin J. - 2013-04-01**

Extract

Open-ended continuity, on the other hand, could be present before closed-ended continuity could be established. Whether open-ended continuity exists 'depends on the specific facts of each case,' the Court explained. 'Without making any claim to cover the field of possibilities,' the Court presented three examples of how this 'open-ended continuity' could be proven: (1) 'if the related predicates themselves involve a distinct threat of long-term racketeering activity, either implicit or explicit;' (2) if the predicate acts are part of the 'regular way of doing business' of a 'long-term association that exists for criminal purposes;' or (3) if the predicates are 'a regular way of conducting the defendant's ongoing legitimate business' or RICO enterprise.

Summary

Legal framework for understanding how ongoing litigation and unfulfilled objectives can support claims of open-ended continuity.

[Racketeer influenced and corrupt organizations.](#)

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

Extract

The 'continuity' prong is satisfied by proof of either closed-ended continuity or open-ended continuity. Closed-ended continuity in the RICO context may be demonstrated 'by proving a series of related predicates extending over a substantial period of time.' Open-ended continuity in the RICO context is conduct that may last only a short period of time but nonetheless poses a threat of extending into the future. The Court suggested a case-by-case examination of this issue, noting that the existence of a 'threat of continued racketeering activity' is a function of particular facts.

Summary

The passage explains the concept of open-ended continuity in the context of RICO claims, which is relevant to the proposition. It states that open-ended continuity can be established if there is a threat of continued racketeering activity, which aligns with the proposition's assertion of a real risk of further predicate acts. The passage also emphasizes the need for a case-by-case examination, which supports the idea that the ongoing nature of the divorce litigation and the unfulfilled enterprise objective could contribute to establishing open-ended continuity.

[Racketeer influenced and corrupt organizations.](#)

American Criminal Law Review - Georgetown University Law Center - Holt, Michael W. - 2009-03-22

Extract

Open-ended continuity is defined as conduct that may last only a short period of time but nonetheless, poses a threat of extending into the future. (59) The Court suggested a case-by-case examination of this issue, noting that the existence of a 'threat of continued racketeering activity' is a function of particular facts. (60)

Summary

The passage defines open-ended continuity as conduct that poses a threat of extending into the future, even if it lasts only a short period. It emphasizes that the threat of continued racketeering activity should be assessed based on particular facts of each case. This aligns with the proposition that ongoing litigation with a real risk of further predicate acts can establish open-ended continuity.

[Racketeer influenced and corrupt organizations.](#)

American Criminal Law Review - Georgetown University Law Center - August, Corey P. - 2010-03-22

Extract

Open-ended continuity in the RICO context is conduct that may last only a short period of time but nonetheless, poses a threat of extending into the future. (60) The Court suggested a case-by-case examination of this issue, noting that the existence of a 'threat of continued racketeering activity' is a function of particular facts. (61)

Summary

The passage explains that open-ended continuity can be established if there is a threat of continued racketeering activity, which aligns with the proposition that ongoing litigation and unfulfilled objectives can pose a real risk of further predicate acts. The context of the passage in a legal review discussing RICO provides a broad applicability to similar cases.

[Racketeer influenced and corrupt organizations.](#)

American Criminal Law Review - Georgetown University Law Center - Franklin, Amy - 2008-03-22

Extract

The 'continuity' component is met by either closed-ended continuity, defined as 'a series of related predicates extending over a substantial period of time,' or open-ended continuity, defined as conduct that poses a threat of extending into the future. The Court suggested a case-by-case examination of this issue, noting that the existence of a 'threat of continued racketeering activity' is a function of particular facts.

Summary

The concept of open-ended continuity under RICO law is defined as conduct that poses a threat of extending into the future. The Court's guidance suggests that the determination of a threat of continued racketeering activity should be based on the specific facts of each case. This aligns with the proposition that ongoing litigation and unfulfilled objectives of an enterprise can support a claim of open-ended continuity if there is a real threat of further predicate acts.

[Racketeer influenced and corrupt organizations.](#)

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

Extract

The 'continuity' component is met by either closed-ended continuity, defined as 'a series of related predicates extending over a substantial period of time,' or open-ended continuity, defined as conduct that poses a threat of extending into the future. The Court suggested a case-by-case examination of this issue, noting that the existence of a 'threat of continued racketeering activity' is a function of particular facts.

Summary

Concept of "continuity" in the context of RICO, specifically addressing open-ended continuity as conduct that poses a threat of extending into the future. This aligns with the proposition that ongoing litigation and the risk of further predicate acts can establish open-ended continuity. The passage also emphasizes a case-by-case examination, which supports the idea that the ongoing nature of the divorce litigation and the unfulfilled enterprise objective can substantiate a real threat of further predicate acts.

[RICO: A Primer](#)

Extract

The continuity requirement is likewise satisfied where the predicates are a regular way of conducting the defendant's ongoing legitimate business (in the sense that it is not a business that exists for criminal purposes), or of conducting or participating in an ongoing and legitimate RICO 'enterprise.' A plaintiff may demonstrate a pattern by establishment that the predicate acts pose a threat of continued criminal activity, which is generally demonstrated by showing either: * Open-ended continuity. A threat of 'continuing criminal activity extending indefinitely into the future,' in light of the nature of the enterprise and predicate acts alleged.

Summary

General framework for understanding how continuity is assessed in RICO cases, which is relevant to the proposition.

[RICO: A Primer](#)

Extract

The continuity requirement is likewise satisfied where the predicates are a regular way of conducting the defendant's ongoing legitimate business (in the sense that it is not a business that exists for criminal purposes), or of conducting or participating in an ongoing and legitimate RICO 'enterprise.' A plaintiff may demonstrate a pattern by establishment that the predicate acts pose a threat of continued criminal activity, which is generally demonstrated by showing either: * Open-ended continuity. A threat of 'continuing criminal activity extending indefinitely into the future,' in light of the nature of the enterprise and predicate acts alleged.

Summary

The passage explains that continuity in RICO cases can be established through open-ended continuity, which involves a threat of continuing criminal activity extending indefinitely into the future. This aligns with the proposition that ongoing litigation and unfulfilled enterprise objectives can support a claim of open-ended continuity, as there is a real threat of further predicate acts.

This memo was compiled by Vincent AI based on vLex materials available as of September 09, 2025. [View full answer on vLex](#)