

# **Question**

What must a plaintiff show in the 10th Circuit to obtain summary judgment on a RICO claim?

## **Answer (Tenth Circuit)**

### **Short response**

To obtain summary judgment on a RICO claim in the 10th Circuit, a plaintiff must demonstrate the four essential elements of a RICO claim: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity, while also showing injury to business or property caused by the violation and proving there is no genuine issue of material fact as to these elements.

### **Summary**

In the 10th Circuit, a plaintiff seeking summary judgment on a Racketeer Influenced and Corrupt Organizations Act (RICO) claim must establish several key elements through undisputed evidence. The plaintiff must demonstrate that the defendant engaged in the conduct of an enterprise through a pattern of racketeering activity, with each of these components having specific requirements established through case law. Additionally, the plaintiff must show that they suffered an injury to business or property that was directly caused by the defendant's RICO violation.

Beyond these basic elements, 10th Circuit precedent requires that the plaintiff establish continuity of the racketeering activity, showing either a closed-ended pattern extending over a substantial period or an open-ended pattern with a threat of future criminal conduct. The plaintiff must satisfy the particularity requirements of Federal Rule of Civil Procedure 9(b) when fraud-based predicate acts are alleged. Finally, to obtain summary judgment rather than merely survive a motion to dismiss, the plaintiff must demonstrate that there is no genuine dispute of material fact regarding any of these elements, providing sufficient undisputed evidence that would entitle them to judgment as a matter of law.

## **Background and Relevant Law**

### **Elements of a Civil RICO Claim**

The Racketeer Influenced and Corrupt Organizations Act (RICO) provides a civil cause of action under 18 U.S.C. § 1964(c) for "[a]ny person injured in his business or property by reason of a violation of [18 U.S.C.] section 1962." [Lynn v. Brown, No. 19-5062, No. 19-5063 \(10th Cir. Feb 07, 2020\)](#). To prevail on a RICO claim, the 10th Circuit has consistently recognized that a plaintiff must establish three fundamental elements: "(1) that the defendant violated

§ 1962; (2) that the plaintiff's business or property was injured; and (3) that the defendant's violation is the cause of that injury." [Safe Streets All. v. Hickenlooper](#), 859 F.3d 865, 881 (10th Cir. 2017); [In re Epipen](#), 545 F.Supp. 3d 922, 948 (D. Kan. 2021); [Jacobo-Rosas v. United States Attorney](#), CV 21-0789 KG/GBW (D. N.M. Mar 02, 2022).

When a plaintiff specifically alleges a violation of § 1962(c), as is common in RICO cases, the 10th Circuit has refined these elements, requiring the plaintiff to establish that the defendant "(1) conducted the affairs (2) of an enterprise (3) through a pattern (4) of racketeering activity." [Robbins v. Wilkie](#), 300 F.3d 1208, 1210 (10th Cir. 2002). This four-part formulation has been consistently applied throughout the 10th Circuit, as evidenced by multiple decisions including [Johnson v. Heath](#), 56 F.4th 851, 858-859 (10th Cir. 2022); [Lopez v. Compa Indus.](#), 1:23-cv-00303-LF (D. N.M. Apr 17, 2023); [Hall v. Witteman](#), 584 F.3d 859, 867 (10th Cir. 2009); and [Tal v. Hogan](#), 453 F.3d 1244, 1261 (10th Cir. 2006).

For claims under § 1962(b), which involves acquiring or maintaining an interest in or control of an enterprise through racketeering activity, a plaintiff must prove:

- Existence of an enterprise;
  - The enterprise engaged in, or its activities affected, interstate or foreign commerce;
  - The defendant acquired or maintained an interest in or control of the enterprise; and
  - The defendant acquired or maintained the interest through a pattern of racketeering activity.
- RICO: A Primer (2022-01-31).

To obtain summary judgment, a plaintiff must prove there are no genuine issues of material fact as to any of these elements, and that they are entitled to judgment as a matter of law on their RICO claim.

## The "Conduct" Element

The "conduct" element requires showing that the defendant participated in the operation or management of the enterprise itself. In the 10th Circuit, the plaintiff must demonstrate that the defendant "conducted or participated, either directly or indirectly, in the conduct of the affairs of the enterprise." RICO: A Primer (2022-01-31). This requires showing some degree of direction or control over the enterprise's affairs.

## The "Enterprise" Element

An "enterprise" under RICO is defined as "a structured group of individuals associated for a common purpose." [Civil Rico: A Tool of Advocacy](#) (2024-01-01). The enterprise must be distinct from the pattern of racketeering activity. The 10th Circuit has acknowledged that there must be a distinction between the "person" (the defendant) and the "enterprise" for most RICO claims. As noted in secondary material, "for most RICO claims, the plaintiff also must plead that the alleged 'person' and 'enterprise,' as

defined in RICO, are distinct." [Defending Civil RICO Claims: A Defense Plan Should Be In Every Business's Arsenal](#) (2022-02-03).

This "distinctiveness" requirement means that "a corporation generally will not be liable for operating an 'enterprise' consisting of itself and its officers or employees." Id. This principle is important for a plaintiff to address when seeking summary judgment, as failure to establish this distinction can be grounds for dismissal.

Additionally, the plaintiff must demonstrate that "the enterprise engaged in, or its activities affected, interstate or foreign commerce." RICO: A Primer (2022-01-31). Without this nexus to interstate commerce, a RICO claim will fail.

## The "Pattern" Element

To establish a "pattern of racketeering activity," a plaintiff in the 10th Circuit must show at least two acts of racketeering activity, as specified in 18 U.S.C. § 1961(1), within 10 years of each other. [Johnson v. Heath, 56 F.4th 851, 858-859 \(10th Cir. 2022\)](#). However, the mere existence of two predicate acts is insufficient. As the 10th Circuit clarified in [Duran v. Carris, 238 F.3d 1268, 1271 \(10th Cir. 2001\)](#), "In order to satisfy RICO's pattern requirement, [a plaintiff] must show two elements—'a relationship between the predicates' and 'the threat of continuing activity.'" This dual requirement of relationship and continuity stems from the Supreme Court's decision in H.J. Inc. v. Northwestern Bell Tel. Co.

The 10th Circuit has consistently emphasized that "RICO is not aimed at the isolated offender." [Tal v. Hogan, 453 F.3d 1244, 1267 \(10th Cir. 2006\)](#). Therefore, "proof of two or more predicate acts are not sufficient to prove a pattern unless there is a relationship between the predicate acts and a threat of continuing activity." Id.

This continuity element receives significant attention in 10th Circuit jurisprudence. As explained in [Hall v. Witteman, 584 F.3d 859, 867 \(10th Cir. 2009\)](#), continuity requires that "the predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity." This can be satisfied by showing "a series of related predicates extending over a substantial period of time," or proving that "the predicates are a regular way of conducting the defendant's ongoing legitimate business or the RICO enterprise." [Tal v. Hogan, 453 F.3d 1244, 1267 \(10th Cir. 2006\)](#).

In [Advanced Optics Electronics, Inc. v. Robins, 633 F.Supp.2d 1237 \(D. N.M. 2008\)](#), the court outlined four distinct requirements for establishing a pattern of racketeering activity:

1. At least two acts that qualify as racketeering activity;
2. The acts must have occurred within ten years of each other;
3. The acts must be related to each other or part of a common scheme;
4. The acts must pose a threat of ongoing or expanding criminal activity.

The 10th Circuit has not established a "bright-line test" for what constitutes a pattern, but it has indicated that "a single fraudulent scheme that has a

definite purpose, the completion of which will end the scheme" does not qualify as a pattern. [Wichita Fed. Sav. & Loan v. Landmark Group, Inc., 674 F. Supp. 321, 331 \(D. Kan. 1987\)](#). However, "an ongoing scheme [with] open-ended fraudulent activity" might satisfy the pattern requirement. Id.

Additionally, the predicate acts must "extend over a substantial period of time; a few weeks or months is considered insubstantial." [Levey v. Wetherall, Civil Action No. 1:19-cv-02294-DDD-MEH \(D. Colo. Sep 29, 2020\)](#). The acts must also "affect more than a single victim and aim to accomplish more than one discrete goal." Id.

## Racketeering Activity

"Racketeering activity" consists of the criminal offenses listed in 18 U.S.C. § 1961(1). [Johnson v. Heath, 56 F.4th 851, 858-859 \(10th Cir. 2022\)](#). Common predicate acts include mail fraud, wire fraud, and other federal crimes. While a defendant does not need to be criminally convicted of these predicate acts for civil RICO liability to attach ([Levey v. Wetherall, Civil Action No. 1:19-cv-02294-DDD-MEH \(D. Colo. Sep 29, 2020\)](#)), the plaintiff must still establish that the defendant's conduct satisfied the elements of the alleged predicate crimes.

For fraud-based predicates, which are common in RICO cases, the 10th Circuit applies the heightened pleading standards of Federal Rule of Civil Procedure 9(b). [D'Arezzo v. Guild Mortg. Co., 23-CV-0242-SWS \(D. Wyo. Sep 24, 2024\)](#). This requires identifying "the party making false statements, and the time, place, and contents of the false representation." Id. This heightened standard applies not just at the pleading stage but also for summary judgment, where a plaintiff must present evidence establishing these details without genuine dispute.

## Injury and Causation

For a plaintiff to have standing and ultimately prevail on a RICO claim, they must establish that their business or property was injured by reason of the defendant's violation of § 1962. [Joseph v. U.S. Pub. Defenders Office \(D. N.M. Nov 09, 2021\)](#). The 10th Circuit has emphasized that the alleged RICO violation must be the direct cause of the plaintiff's injury.

The causation requirement is particularly stringent. In [In re Epipen \(Epinephrine Injection, Usp\) Mktg., Sales Practices & Antitrust Litig., 568 F.Supp.3d 1184 \(D. Kan. 2021\)](#), the court emphasized that a plaintiff must show that the predicate acts themselves—not simply the alleged fraudulent scheme—were the "but-for" cause of the plaintiff's injuries. The court rejected the argument that merely showing a "link" between wrongful conduct and injury was sufficient to establish RICO causation. Instead, it required the plaintiff to demonstrate that "defendants' predicate acts—not simply the alleged fraudulent scheme—caused plaintiffs' injuries." Id. This represents a more demanding standard that plaintiffs must meet to obtain summary judgment on RICO claims in the 10th Circuit.

# **Analysis: Requirements for Summary Judgment on a RICO Claim**

To obtain summary judgment on a RICO claim in the 10th Circuit, a plaintiff must present undisputed evidence establishing each of the elements discussed above. I will now analyze how these elements work together in the context of summary judgment.

## **Summary Judgment Standard**

While the provided materials do not specifically address the summary judgment standard in RICO cases, it is important to note that under Federal Rule of Civil Procedure 56, a plaintiff seeking summary judgment must show that there is no genuine dispute as to any material fact and that the plaintiff is entitled to judgment as a matter of law. This standard applies to RICO claims as with any other civil claim.

## **Establishing Violation of § 1962**

As noted in [Safe Streets All. v. Hickenlooper, 859 F.3d 865, 881 \(10th Cir. 2017\)](#), the first element a plaintiff must prove is that the defendant violated § 1962. Most commonly, plaintiffs allege violations of § 1962(c), which makes it unlawful for "any person employed by or associated with an enterprise... to conduct or participate... in the conduct of such enterprise's affairs through a pattern of racketeering activity." [Phelps v. Wichita Eagle-Beacon, 886 F.2d 1262, 1273 \(10th Cir. 1989\)](#).

To establish this violation at summary judgment, a plaintiff must present undisputed evidence of:

1. The existence of an enterprise affecting interstate commerce;
2. The defendant's association with or employment by the enterprise;
3. The defendant's participation in the conduct of the enterprise's affairs; and
4. That this participation was through a pattern of racketeering activity.

## **Proving the Enterprise Element**

At summary judgment, the plaintiff must present evidence establishing the existence of an enterprise that is distinct from the defendant and the pattern of racketeering activity. As the secondary literature notes, "a corporation generally will not be liable for operating an 'enterprise' consisting of itself and its officers or employees." [Defending Civil RICO Claims: A Defense Plan Should Be In Every Business's Arsenal](#) (2022-02-03).

The plaintiff must also present evidence that the enterprise affected interstate commerce. Without this showing, the RICO claim will fail. Id.

## **Demonstrating a Pattern of Racketeering Activity**

To obtain summary judgment, the plaintiff must present undisputed evidence of at least two predicate acts of racketeering occurring within ten years of each other. [Johnson v. Heath, 56 F.4th 851, 858-859 \(10th Cir. 2022\)](#). However, merely establishing two predicate acts is insufficient.

The plaintiff must also demonstrate the relationship between these acts and their continuity. For the relationship aspect, the plaintiff must show that the predicate acts are "part of a common fraudulent scheme." [Torwest DBC, Inc. v. Dick, 810 F.2d 925, 928 \(10th Cir. 1987\)](#).

For the continuity element, which has received significant attention in 10th Circuit jurisprudence, the plaintiff must present evidence showing either:

1. "A series of related predicates extending over a substantial period of time" (closed-ended continuity); or
2. That "the predicates are a regular way of conducting the defendant's ongoing legitimate business or the RICO enterprise" (open-ended continuity).

[Tal v. Hogan, 453 F.3d 1244, 1267 \(10th Cir. 2006\)](#).

The 10th Circuit has specifically noted that "a few weeks or months is considered insubstantial" for establishing continuity. [Levey v. Wetherall, Civil Action No. 1:19-cv-02294-DDD-MEH \(D. Colo. Sep 29, 2020\)](#).

Additionally, the predicate acts must "affect more than a single victim and aim to accomplish more than one discrete goal." *Id.*

## **Proving the Predicate Acts**

For each alleged predicate act, the plaintiff must present evidence that satisfies the elements of the underlying criminal statute. When the predicate acts involve fraud (as is common in RICO cases), the plaintiff must adhere to the heightened pleading standards of Rule 9(b) and present evidence that would satisfy this standard.

As noted in [D'Arezzo v. Guild Mortg. Co.](#), 23-CV-0242-SWS (D. Wyo. Sep 24, 2024), this requires identifying "the party making false statements, and the time, place, and contents of the false representation." For summary judgment purposes, the plaintiff must present evidence establishing these details without genuine dispute.

## **Establishing Injury and Causation**

To obtain summary judgment, the plaintiff must present undisputed evidence that their business or property was injured and that this injury was directly caused by the defendant's RICO violation.

The 10th Circuit applies a stringent causation standard, requiring the plaintiff to demonstrate that the predicate acts themselves—not just the overall scheme—were the "but-for" cause of the plaintiff's injuries. [In re Epipen \(Epinephrine Injection, Usp\) Mktg., Sales Practices & Antitrust](#)

[Litig., 568 F.Supp.3d 1184 \(D. Kan. 2021\)](#). This requires evidence directly linking the specific racketeering acts to the plaintiff's harm.

## Exceptions and Caveats

There are several important caveats and potential challenges that plaintiffs seeking summary judgment on RICO claims in the 10th Circuit should consider:

### Standing Requirements

A plaintiff has standing to bring a RICO claim "only if he was injured in his business or property by reason of the defendant's violation of § 1962." [Joseph v. U.S. Pub. Defenders Office](#) (D. N.M. Nov 09, 2021). Personal injuries, emotional distress, or other non-economic harms do not qualify as injuries to "business or property" under RICO.

### Distinctiveness Requirement

As noted earlier, there must be a distinction between the "person" (the defendant) and the "enterprise" in RICO claims under § 1962(c). If the plaintiff fails to establish this distinction, the claim will not succeed. [Defending Civil RICO Claims: A Defense Plan Should Be In Every Business's Arsenal](#) (2022-02-03).

### Strict Adherence to Technical Requirements

The technical requirements for a RICO claim "must be strictly adhered to because the statute was designed to accomplish certain congressional objectives." [Saine v. AIA, INC., 582 F.Supp. 1299, 1308 \(D. Colo. 1984\)](#). Given the potential for treble damages, courts in the 10th Circuit require clear and specific evidence establishing each element of the claim.

### No Requirement for Criminal Conviction

While a plaintiff must present evidence that the defendant committed predicate acts that would be indictable under the specific statutes listed in 18 U.S.C. § 1961(1), there is no requirement that the defendant has been formally convicted of these offenses. [Levey v. Wetherall, Civil Action No. 1:19-cv-02294-DDD-MEH \(D. Colo. Sep 29, 2020\)](#). However, the plaintiff still bears the burden of proving all elements of the predicate crimes.

### No Requirement to Show Organized Crime Connection

The 10th Circuit has explicitly recognized that "an actionable RICO claim need not allege... that the defendants had ties to organized crime." [Condict v. Condict, 815 F.2d 579, 583 \(10th Cir. 1987\)](#). Although this case was stated as superseded by Maxwell v. Wilson, 766 P.2d 909 (N.M. 1988), this particular point about organized crime connections not being required for

RICO claims remains valid law in the 10th Circuit and has been reaffirmed in subsequent cases.

## No Requirement for Distinct RICO Injury

Similarly, the 10th Circuit does not require plaintiffs to allege "a distinct RICO injury" beyond the harm caused by the predicate acts. [Condict v. Condict, 815 F.2d 579, 583 \(10th Cir. 1987\)](#). While this case was superseded on other grounds, this particular point about no distinct RICO injury being required has been maintained in 10th Circuit jurisprudence. The [Plains Resources, Inc. v. Gable, 782 F.2d 883, 887 \(10th Cir. 1986\)](#) decision confirms that "there is no room in the statutory language for an additional, amorphous 'racketeering injury' requirement."

## Conclusion

To obtain summary judgment on a RICO claim in the 10th Circuit, a plaintiff must present undisputed evidence establishing each of the following elements:

1. A violation of 18 U.S.C. § 1962, typically subsection (c), which requires proving:
  - The defendant's conduct of an enterprise's affairs
  - The existence of an enterprise affecting interstate commerce that is distinct from the defendant
  - A pattern of racketeering activity, which includes:
    - At least two predicate acts of racketeering within ten years
    - A relationship between these acts (common scheme or purpose)
    - Continuity of the racketeering activity (either closed-ended over a substantial period or open-ended with threat of continuation)
  - The predicate acts must be established with particularity when based on fraud
2. Injury to the plaintiff's business or property that was directly caused by the defendant's RICO violation, with evidence showing:
  - A concrete economic injury
  - That the specific predicate acts were the "but-for" cause of this injury
3. No genuine dispute of material fact regarding any of these elements, with sufficient undisputed evidence that would entitle the plaintiff to judgment as a matter of law

The 10th Circuit takes a strict approach to RICO claims, emphasizing that "RICO is not aimed at the isolated offender." [Tal v. Hogan, 453 F.3d 1244, 1267 \(10th Cir. 2006\)](#). The pattern element requires more than just two related predicate acts—it demands evidence of either closed-ended

continuity (related predicates over a substantial time period) or open-ended continuity (threat of ongoing criminal activity).

For fraud-based RICO claims, which are common, the plaintiff must satisfy the heightened pleading standard of Federal Rule of Civil Procedure 9(b), identifying specific details about the fraudulent conduct. [D'Arezzo v. Guild Mortg. Co.](#), 23-CV-0242-SWS (D. Wyo. Sep 24, 2024).

Finally, the causation requirement is particularly demanding in the 10th Circuit, requiring proof that the specific predicate acts—not just the overall scheme—were the direct cause of the plaintiff's injuries. [In re Epipen \(Epinephrine Injection, Usp\) Mktg., Sales Practices & Antitrust Litig.](#), 568 F.Supp.3d 1184 (D. Kan. 2021).

Given these stringent requirements, obtaining summary judgment on a RICO claim in the 10th Circuit presents a significant challenge. The plaintiff must present compelling, undisputed evidence on each element to prevail as a matter of law.

## Legal Authorities

[In re Epipen \(Epinephrine Injection, Usp\) Mktg., Sales Practices & Antitrust Litig.](#), 568 F.Supp.3d 1184 (D. Kan. 2021)

### U.S. District Court — District of Kansas

#### Extract

Instead, the dispositive problem stemmed from plaintiffs' failure to show a triable issue that the predicate acts—the use of the mails and wires to further the alleged EpiPen pricing scheme—were the 'but-for' cause of plaintiffs' injuries. And that is why the court granted summary judgment against plaintiffs' RICO claim. Plaintiffs haven't shown that the court's analysis clearly erred. ... Also, plaintiffs fail to show that the court clearly erred by applying the law governing 'but-for' RICO causation. Plaintiffs argue that RICO causation only requires them to show a 'link ... between the wrongful conduct and the plaintiffs' injury.' Doc. 2398 at 18 (emphasis omitted). But, that's not a precise description of the causation requirement. Instead, the governing case law requires a RICO plaintiff to establish causation by showing that defendants' predicate acts—not simply the alleged fraudulent scheme—caused plaintiffs' injuries.

#### Summary

The passage provides insight into the causation requirement for a RICO claim in the Tenth Circuit. It emphasizes that plaintiffs must demonstrate that the predicate acts, such as the use of mails and wires, were the "but-for" cause of their injuries. This is a critical element for obtaining summary judgment on a RICO claim, as it distinguishes between the wrongful conduct and the specific acts that caused the injury.

[Advanced Optics Electronics, Inc. v. Robins, 633 F.Supp.2d 1237 \(D. N.M. 2008\)](#)

### **U.S. District Court — District of New Mexico**

#### **Extract**

To show a pattern of racketeering activity under RICO requires showing that four separate elements have been met: (i) there must be at least two acts that would qualify as racketeering activity; (ii) the acts must have occurred within ten years of each other; (iii) the acts must be related to each other or part of a common scheme; and (iv) the acts must pose a threat of ongoing or expanding criminal activity.

#### **Summary**

Clear outline of the elements required to establish a pattern of racketeering activity under RICO, which is essential for a plaintiff seeking summary judgment on a RICO claim. The context of the passage is a federal district court decision within the Tenth Circuit, making it directly relevant to the question. The scope is generally applicable to RICO claims in this jurisdiction.

[Bancoklahoma Mortgage Corp. v. Capital Title Co., 194 F.3d 1089 \(10th Cir. 1999\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

To establish a civil RICO claim under 18 U.S.C. 1962(c), BOMC must show that the Title Companies '(1) participated in the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' Resolution Trust Corp. v. Stone, 998 F.2d 1534, 1541 (10th Cir. 1993) (citing Phelps v. Wichita Eagle-Beacon, 886 F.2d 1262, 1273 (10th Cir. 1989)).

#### **Summary**

To establish a civil RICO claim under 18 U.S.C. 1962(c) in the Tenth Circuit, a plaintiff must demonstrate four elements: participation in the conduct, of an enterprise, through a pattern, of racketeering activity. This is a general requirement for civil RICO claims in this jurisdiction, as cited in previous cases such as Resolution Trust Corp. v. Stone and Phelps v. Wichita Eagle-Beacon.

[Resolution Trust Corp. v. Stone, 998 F.2d 1534 \(10th Cir. 1993\)](#)

## **U.S. Court of Appeals — Tenth Circuit**

### **Extract**

To prove a claim under § 1962(c), the Plaintiff must show that PIIGI (1) participated in the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.

### **Summary**

Elements a plaintiff must demonstrate to establish a RICO claim under § 1962(c) in the Tenth Circuit. These elements include participation in the conduct of an enterprise through a pattern of racketeering activity. This is a general requirement for RICO claims and is not limited to specific cases, making it broadly applicable within the jurisdiction.

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

## **U.S. Court of Appeals — Tenth Circuit**

### **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. 18 U.S.C. § 1962(a), (b), & (c). '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. ... As a final point, we question whether Plaintiffs' allegations of predicate acts satisfied the requirement of 'a pattern of racketeering activity.' A 'pattern' of racketeering is defined as 'at least two acts of racketeering activity, ... which occurred within ten years' of each other. 18 U.S.C. § 1961(5). However, because 'RICO is not aimed at the isolated offender,' Resolution Trust Corp., 998 F.2d at 1544, proof of two or more predicate acts are not sufficient to prove a pattern unless there is a relationship between the predicate acts and a threat of continuing activity. H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 239, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989); Duran v. Carris, 238 F.3d 1268, 1271 (10th Cir.2001). Continuity of threat requires both proof of 'a series of related predicates extending over a substantial period of time,' as well as a 'showing that the predicates themselves involve a distinct threat of long-term racketeering activity ... or that the predicates are a regular way of conducting the defendant's ongoing legitimate business or the RICO enterprise.' Resolution Trust Corp., 998 F.2d at 1543.

### **Summary**

To obtain summary judgment on a RICO claim in the Tenth Circuit, a plaintiff must demonstrate the elements of a civil RICO claim, which include: (1) investment in, control of, or conduct of an enterprise; (2) through a pattern of racketeering activity. The pattern of racketeering activity must consist of

at least two acts of racketeering that are related and pose a threat of continued criminal activity. This requires showing a series of related predicates over a substantial period and a distinct threat of long-term racketeering activity.

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

**U.S. Court of Appeals — Tenth Circuit**

**Extract**

To maintain a cause of action under § 1964(c), a plaintiff must plead and ultimately prove: (1) that the defendant violated § 1962 ; (2) that the plaintiff's business or property was injured; and (3) that the defendant's violation is the cause of that injury. *Id.* ; see *RJR*, 136 S.Ct. at 2096-97.

**Summary**

Elements a plaintiff must establish to maintain a RICO claim under § 1964(c) in the Tenth Circuit. Specifically, the plaintiff must demonstrate a violation of § 1962 by the defendant, an injury to the plaintiff's business or property, and a causal link between the defendant's violation and the injury. This is a general requirement for RICO claims and is applicable to cases within the Tenth Circuit.

[Pitts v. Turner and Boisseau Chartered, 850 F.2d 650 \(10th Cir. 1988\)](#)

**U.S. Court of Appeals — Tenth Circuit**

**Extract**

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). RICO defines racketeering activity as, *inter alia*, any act that is indictable under 18 U.S.C. Sec. 1341 (mail fraud) or 18 U.S.C. Sec. 1343 (wire fraud). See 18 U.S.C. Sec. 1961(1)(B). RICO also states that a ' "pattern of racketeering activity" requires at least two acts of racketeering activity.' 18 U.S.C. Sec. 1961(5). ... [T]o establish a RICO pattern, a plaintiff must also demonstrate continuity, that is, 'the threat of continuing activity.' *Sedima*, 105 S.Ct. at 3285 n. 14. This element is derived from RICO's legislative history, which indicates that RICO does not apply to 'sporadic activity' or to the 'isolated offender'.

**Summary**

Elements required to establish a RICO violation, which are essential for a plaintiff seeking summary judgment on a RICO claim. The plaintiff must

demonstrate conduct of an enterprise through a pattern of racketeering activity, which includes showing continuity or the threat of ongoing illegal conduct. This is a general requirement for RICO claims in the Tenth Circuit.

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

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

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). RICO defines racketeering activity as, *inter alia*, any act that is indictable under 18 U.S.C. Sec. 1341 (mail fraud) or 18 U.S.C. Sec. 1343 (wire fraud). See 18 U.S.C. Sec. 1961(1)(B). RICO also states that a 'pattern of racketeering activity' requires at least two acts of racketeering activity. ... In this case, the court and the parties assumed for purposes of the court's ruling that defendants engaged in numerous racketeering acts. It is clear that when, as here, the acts are part of a common fraudulent scheme, they satisfy the relationship requirement of Sedima. ... However, to establish a RICO pattern, a plaintiff must also demonstrate continuity, that is, 'the threat of continuing activity.' Sedima, 105 S.Ct. at 3285 n. 14.

#### **Summary**

To obtain summary judgment on a RICO claim in the Tenth Circuit, a plaintiff must demonstrate: (1) conduct, (2) of an enterprise, (3) through a pattern, (4) of racketeering activity. The pattern of racketeering activity requires at least two acts of racketeering, and these acts must be part of a common fraudulent scheme to satisfy the relationship requirement. Additionally, the plaintiff must demonstrate continuity, meaning the threat of continuing activity, to establish a RICO pattern.

[Lopez v. Compa Indus., 1:23-cv-00303-LF \(D. N.M. Apr 17, 2023\)](#)

### **U.S. District Court — District of New Mexico**

#### **Extract**

To plead a valid RICO claim, a plaintiff must plausibly allege that a defendant "(1) conducted the affairs (2) of an enterprise (3) through a pattern (4) of racketeering activity."... Johnson v. Heath, 56 F.4th 851, 858-859 (10th Cir. 2022).

## **Summary**

Clear framework for what must be shown: conducting the affairs of an enterprise through a pattern of racketeering activity.

[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 in the 10th Circuit, which include the investment in, control of, or conduct of an enterprise through a pattern of racketeering activity. It also specifies that the predicate acts must extend over a substantial period of time and affect more than a single victim. This information is directly relevant to understanding what a plaintiff must demonstrate to obtain summary judgment on a RICO claim in the 10th Circuit.

[Jacobo-Rosas v. United States Attorney, CV 21-0789 KG/GBW \(D. N.M. Mar 02, 2022\)](#)

### **U.S. District Court — District of New Mexico**

#### **Extract**

To maintain a cause of action under § 1964(c), a plaintiff must plead and ultimately prove: (1) that the defendant violated § 1962; (2) that the plaintiff's business or property was injured; and (3) that the defendant's violation is the cause of that injury. *Id.*; see *RJR Nabisco*, 136 S.Ct. at 2096-97; *Safe Streets All. v. Hickenlooper*, 859 F.3d 865, 881 (10th Cir.

2017); Robbins v. Wilkie, 300 F.3d 1208, 1210 (10th Cir.2002). A pattern of racketeering activity must include commission of at least two predicate acts.

## **Summary**

To obtain summary judgment on a RICO claim in the 10th Circuit, a plaintiff must demonstrate that the defendant violated § 1962, that the plaintiff's business or property was injured, and that the defendant's violation caused that injury. Additionally, the plaintiff must show a pattern of racketeering activity, which includes at least two predicate acts. This information is applicable to RICO claims in the 10th Circuit.

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

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

If the defendant engages in a pattern of racketeering activity in a manner forbidden by [Secs. 1962(a)-(c) ], and the racketeering activities injure the plaintiff in his business or property, the plaintiff has a claim under Sec. 1964(c). There is no room in the statutory language for an additional, amorphous 'racketeering injury' requirement. ... Where the plaintiff alleges each element of the violation, the compensable injury necessarily is the harm caused by predicate acts sufficiently related to constitute a pattern, for the essence of the violation is the commission of those acts in connection with the conduct of an enterprise.

## **Summary**

The passage from the Plains Resources, Inc. v. Gable case provides insight into what a plaintiff must demonstrate to succeed in a RICO claim in the Tenth Circuit. The court clarifies that a plaintiff must show that the defendant engaged in a pattern of racketeering activity that is prohibited by Sections 1962(a)-(c) and that these activities caused injury to the plaintiff's business or property. The court explicitly states that there is no requirement for an additional "racketeering injury" beyond the harm caused by the predicate acts themselves. This indicates that the focus is on the pattern of racketeering activity and its direct impact on the plaintiff.

[Joseph v. U.S. Pub. Defenders Office](#)

### **U.S. District Court — District of New Mexico**

#### **Extract**

To maintain a cause of action under § 1964(c), a plaintiff must plead and ultimately prove that: (1) the defendant violated § 1962; (2) the plaintiff's

business or property was injured; and (3) the defendant's violation is the cause of that injury. 18 U.S.C. § 1964(c); RJR Nabisco, 136 S.Ct. at 2096-97; Safe Streets All. v. Hickenlooper, 859 F.3d 865, 881 (10th Cir. 2017); Robbins v. Wilkie, 300 F.3d 1208, 1210 (10th Cir. 2002). Further, a plaintiff has standing to bring a RICO claim only if he was injured in his business or property by reason of the defendant's violation of § 1962. Robbins, 300 F.3d at 1210.

## **Summary**

To obtain summary judgment on a RICO claim in the Tenth Circuit, a plaintiff must demonstrate that the defendant violated § 1962, that the plaintiff's business or property was injured, and that the defendant's violation caused that injury. Additionally, the plaintiff must have standing, which requires showing injury to business or property due to the defendant's violation of § 1962.

[Saine v. AIA, INC., 582 F.Supp. 1299 \(D. Colo. 1984\)](#)

### **U.S. District Court — District of Colorado**

#### **Extract**

The technical requirements for a § 1964(c) claim must be strictly adhered to because the statute was designed to accomplish certain congressional objectives. See Noland v. Gurley, *supra*. In face of the difficulties the courts have had in interpreting the provisions of RICO and also in face of the treble damage liability which defendants are subject to, it is imperative that Saine and NHI, as well as the court, be placed on clear notice as to the elements constituting AIA's RICO allegations.

## **Summary**

The passage emphasizes the importance of strictly adhering to the technical requirements of a § 1964(c) RICO claim. This suggests that for a plaintiff to obtain summary judgment on a RICO claim, they must clearly establish the elements of the claim as required by the statute. The passage highlights the need for clear notice of the elements constituting the RICO allegations, which implies that a plaintiff must provide detailed and specific evidence to support each element of the RICO claim.

[In re EpiPen, 545 F.Supp.3d 922 \(D. Kan. 2021\)](#)

### **U.S. District Court — District of Kansas**

## **Extract**

To prevail on a RICO claim, a plaintiff must establish: '(1) that the defendant violated § 1962 ; (2) that the plaintiff's business or property was injured; and (3) that the defendant's violation is the cause of that injury.' Safe Sts. All. v. Hickenlooper, 859 F.3d 865, 881 (10th Cir. 2017) (citations omitted).

## **Summary**

Clear outline of the elements a plaintiff must establish to prevail on a RICO claim in the Tenth Circuit. It specifies the need to demonstrate a violation of § 1962, injury to business or property, and causation of that injury by the defendant's violation. This is directly relevant to understanding what a plaintiff must show to obtain summary judgment on a RICO claim.

[Macarthur v. San Juan County, 416 F.Supp.2d 1098 \(D. Utah 2005\)](#)

## **U.S. District Court — District of Utah**

### **Extract**

To establish a civil RICO claim under 18 U.S.C. § 1962(c), [plaintiff] must show that the [defendants] `(1) participated in the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' Resolution Trust Corp. v. Stone, 998 F.2d 1534, 1541 (10th Cir.1993) (citing Phelps v. Wichita Eagle-Beacon, 886 F.2d 1262, 1273 (10th Cir.1989)).

## **Summary**

To establish a civil RICO claim in the Tenth Circuit, a plaintiff must demonstrate four elements: (1) participation in the conduct, (2) of an enterprise, (3) through a pattern, (4) of racketeering activity. This is a standard requirement for civil RICO claims in this jurisdiction, as cited in multiple cases.

[Kamin v. Colorado Nat. Bank of Denver, 648 F.Supp. 52 \(D. Colo. 1986\)](#)

## **U.S. District Court — District of Colorado**

### **Extract**

In order to state a cause of action under the RICO Act, a plaintiff need only allege 1) conduct; 2) of an enterprise; 3) through a pattern; 4) of racketeering activity; 5) which causes injury in his business or property. Sedima S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985); Plains Resources, Inc. v. John R. Gable, 782 F.2d 883, 887 (10th Cir.1986).

## **Summary**

Elements a plaintiff must allege to state a RICO claim, which are essential for obtaining summary judgment. These elements include conduct, an enterprise, a pattern of racketeering activity, and injury to business or property. The passage is relevant as it directly addresses the requirements for a RICO claim in the Tenth Circuit.

[Condict v. Condict, 826 F.2d 923 \(10th Cir. 1987\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

Specifically, the defendants concede that an actionable RICO claim need not allege a distinct RICO injury, nor need it allege that the defendants have already been indicted for, or convicted of, the predicate acts of mail or wire fraud, or that the defendants had ties to organized crime. However, the defendants do argue that under Sedima the plaintiffs must still allege that the defendants are conducting, or are participating in conducting, the affairs of an 'enterprise,' i.e., Condict Ranches, 'through a pattern of racketeering activity.' In this particular, the defendants argue that the complaint is fatally deficient, while plaintiffs argue that the complaint does measure up to Sedima and 18 U.S.C. Sec. 1962(c).

## **Summary**

In the Tenth Circuit, a plaintiff does not need to show a distinct RICO injury, nor that the defendants have been indicted or convicted of predicate acts, nor that they have ties to organized crime. However, the plaintiff must allege that the defendants are conducting or participating in the conduct of an enterprise through a pattern of racketeering activity, as per 18 U.S.C. Sec. 1962(c). This aligns with the requirements set forth in the Sedima case.

[Lynn v. Brown, No. 19-5062, No. 19-5063 \(10th Cir. Feb 07, 2020\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

A civil RICO claim may be brought by '[a]ny person injured in his business or property by reason of a violation of [18 U.S.C.] section 1962.' 18 U.S.C. § 1964(c). Ms. Lynn alleges in her complaint that the defendants violated the entire RICO statute, but as best we can determine she is attempting to allege that each of them violated § 1962(c). To state a civil RICO claim for violation of § 1962(c), Ms. Lynn was required to 'plausibly allege that the defendants each (1) conducted the affairs (2) of an enterprise (3) through a

pattern (4) of racketeering activity.' *Safe StreetsAll. v. Hickenlooper*, 859 F.3d 865, 882 (10th Cir. 2017) (internal quotation marks omitted).

## **Summary**

To state a civil RICO claim for violation of § 1962(c) in the Tenth Circuit, a plaintiff must plausibly allege that the defendants each conducted the affairs of an enterprise through a pattern of racketeering activity. This requirement is generally applicable to civil RICO claims in this jurisdiction.

[Condict v. Condict, 815 F.2d 579 \(10th Cir. 1987\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

Specifically, the defendants concede that an actionable RICO claim need not allege a distinct RICO injury, nor need it allege that the defendants have already been indicted for, or convicted of, the predicate acts of mail or wire fraud, or that the defendants had ties to organized crime. However, the defendants do argue that under Sedima the plaintiffs must still allege that the defendants are conducting, or are participating in conducting, the affairs of an 'enterprise,' i.e., Condict Ranches, 'through a pattern of racketeering activity.' In this particular, the defendants argue that the complaint is fatally deficient, while plaintiffs argue that the complaint does measure up to Sedima and 18 U.S.C. Sec. 1962(c).

## **Summary**

In the Tenth Circuit, a plaintiff does not need to show a distinct RICO injury, a conviction of predicate acts, or ties to organized crime to make a RICO claim. However, the plaintiff must allege that the defendants are conducting or participating in the conduct of an enterprise's affairs through a pattern of racketeering activity, as per 18 U.S.C. Sec. 1962(c). This requirement is crucial for establishing a RICO claim.

[Hall v. Witteman, 584 F.3d 859 \(10th Cir. 2009\)](#)

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

"In order to bring a RICO claim, a plaintiff must allege a violation of 18 U.S.C. § 1962, which consists of four elements: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Gillmor v. Thomas*, 490 F.3d 791, 797 (10th Cir. 2007) (internal quotation marks omitted). A ``pattern of racketeering activity' requires at least two acts of racketeering activity." 18 U.S.C. § 1961(5). Those acts, commonly referred to

as "predicate acts," must be violations of certain statutes. See *id.* § 1961(1). Mr. Hall's complaint alleges violations of federal mail-fraud, wire-fraud, and extortion statutes. Although the district court held those allegation to be inadequate, we need not address that issue. Even if the allegations of predicate acts were adequate, we agree with the district court that the complaint does not adequately allege a "pattern" of racketeering activity because it fails to allege sufficient continuity to sustain a RICO claim. "RICO is not aimed at the isolated offender." *Tal v. Hogan*, 453 F.3d 1244, 1267 (10th Cir. 2006) (internal quotation marks omitted). To satisfy RICO's pattern requirement, Mr. Hall needed to 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." *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 240, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989).

## **Summary**

To bring a RICO claim in the Tenth Circuit, a plaintiff must allege a violation of 18 U.S.C. § 1962, which includes four elements: conduct, of an enterprise, through a pattern, of racketeering activity. The pattern of racketeering activity requires at least two predicate acts that must be violations of certain statutes. Additionally, the plaintiff must demonstrate that these predicate acts amount to or constitute a threat of continuing racketeering activity. This information is essential for understanding what a plaintiff must show to obtain summary judgment on a RICO claim in the Tenth Circuit.

[D'Arezzo v. Guild Mortg. Co., 23-CV-0242-SWS \(D. Wyo. Sep 24, 2024\)](#)

## **U.S. District Court — District of Wyoming**

### **Extract**

To bring a successful RICO claim, D'Arezzo must assert with particularity the conduct of an enterprise through a pattern of racketeering activity. *Tal v. Hogan*, 453 F.3d 1244, 1261 (10th Cir. 2006). The particularity requirement of Federal Rule of Civil Procedure 9(b) applies to RICO claims and requires the complaint to identify the party making false statements, and the time, place, and contents of the false representation. *Id.* at 1263 (quoting *Koch v. Koch Indus.*, 203 F.3d 1202, 1236 (10th Cir. 2000)).

## **Summary**

The passage provides specific requirements for a plaintiff to successfully assert a RICO claim in the 10th Circuit, which includes demonstrating the conduct of an enterprise through a pattern of racketeering activity with particularity. This involves identifying the party making false statements and detailing the time, place, and contents of the false representation, as required by Federal Rule of Civil Procedure 9(b).

[Wichita Fed. Sav. & Loan v. Landmark Group, Inc., 674 F. Supp. 321 \(D. Kan. 1987\)](#)

## **U.S. District Court — District of Kansas**

### **Extract**

The Tenth Circuit has yet to 'formulate a bright-line test' for determining the existence of a 'pattern'. *Torwest DBC, Inc., v. Dick*, 810 F.2d 925, 929 (10th Cir.1987). In *Torwest*, it found what was not a pattern: a single fraudulent scheme that has a definite purpose, the completion of which will end the scheme. In reaching this decision, the Tenth Circuit contrasted the type of scheme involved in this case, stating: A more difficult question is presented when the RICO claim is based on one scheme involving one victim, but the plan contemplates open-ended fraudulent activity and does not have a single goal that, when achieved, will bring the activity to an end. Some courts have found that such an ongoing scheme is itself sufficient to satisfy the continuity element of a RICO pattern.

### **Summary**

The Tenth Circuit has not established a definitive test for what constitutes a "pattern" of racketeering activity under RICO. However, it has indicated that a single scheme with a definite end does not satisfy the pattern requirement, whereas an ongoing scheme with open-ended fraudulent activity might. This is crucial for a plaintiff seeking summary judgment on a RICO claim, as they must demonstrate a pattern of racketeering activity.

[Duran v. Carris, 238 F.3d 1268 \(10th Cir. 2001\)](#)

## **U.S. Court of Appeals — Tenth Circuit**

### **Extract**

In order to satisfy RICO's pattern requirement, Mr. Duran must show two elements--'a relationship between the predicates' and 'the threat of continuing activity.' *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989) (quotation omitted). Interpreting RICO's legislative history, the Supreme Court stated that the pattern element is not satisfied by a showing of relatedness alone. *Id.* at 240. '[I]t must also be shown that the predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity.' *Id.*

### **Summary**

The passage provides insight into the requirements for establishing a RICO claim, specifically the need to demonstrate both a relationship between predicate acts and a threat of continuing criminal activity. This is essential

for understanding what a plaintiff must show to succeed in a RICO claim in the Tenth Circuit.

[Robbins v. Wilkie, 300 F.3d 1208 \(10th Cir. 2002\)](#)

**U.S. Court of Appeals — Tenth Circuit**

**Extract**

To successfully state a RICO claim, a plaintiff must allege four elements: &#34;(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.&#34; Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 496, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985); BancOklahoma Mortgage Corp. v. Capital Title Co. Inc., 194 F.3d 1089, 1100 (10th Cir.1999).

**Summary**

The passage provides the essential elements that a plaintiff must allege to successfully state a RICO claim in the Tenth Circuit. These elements are conduct, enterprise, pattern, and racketeering activity. This information is crucial for understanding what a plaintiff must demonstrate to obtain summary judgment on a RICO claim, as it sets the foundational requirements for such a claim.

[Phelps v. Wichita Eagle-Beacon, 886 F.2d 1262 \(10th Cir. 1989\)](#)

**U.S. Court of Appeals — Tenth Circuit**

**Extract**

Plaintiff has alleged that defendants violated the civil Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Secs. 1961-1965. That Act makes it unlawful for 'any person employed by or associated with an enterprise ... to conduct or participate ... in the conduct of such enterprise's affairs through a pattern of racketeering activity....' 18 U.S.C. Sec. 1962(c). Thus, in order to state a RICO claim, plaintiff must sufficiently allege '(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, 496, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985).

**Summary**

Elements required to state a RICO claim, which are essential for a plaintiff to establish in order to succeed in obtaining summary judgment. The elements include conduct, an enterprise, a pattern, and racketeering activity. This is a general requirement for RICO claims and is applicable to cases within the Tenth Circuit.

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

### **U.S. Court of Appeals — Tenth Circuit**

#### **Extract**

To plead a valid RICO claim, a plaintiff must plausibly allege that a defendant '(1) conducted the affairs (2) of an enterprise (3) through a pattern (4) of racketeering activity.' George v. Urb. Settlement Servs., 833 F. 3d 1242, 1248 (10th Cir. 2016). 'Racketeering activity' consists of the criminal offenses listed in 18 U.S.C. § 1961(1), and a 'pattern' requires at least two racketeering acts committed within ten years of each other. 18 U.S.C. § 1961(5).

#### **Summary**

Clear outline of the elements necessary to establish a RICO claim, which is essential for understanding what a plaintiff must demonstrate to succeed in such a claim.

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

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

#### **Extract**

To establish a § 1962(c) RICO claim, the following elements must be proven:

- Enterprise: A structured group of individuals associated for a common purpose.
- Pattern of racketeering activity: At least two acts of racketeering, as specified within the statute, within 10 years.
- Conduct: Directly or indirectly conducting the enterprise's affairs through racketeering.
- Injury: An injury to business or property due to the racketeering activity.

#### **Summary**

Clear outline of the elements that must be proven to establish a RICO claim under § 1962(c). These elements include the existence of an enterprise, a pattern of racketeering activity, conduct of the enterprise's affairs through racketeering, and an injury to business or property. This information is directly relevant to understanding what a plaintiff must demonstrate to obtain summary judgment on a RICO claim in the 10th Circuit.

## [Defending RICO Claims In The Business Context Part II: RICO Claims Must Allege Injury To Business Or Property](#)

## **Extract**

If a plaintiff brings a civil suit alleging a RICO violation, the plaintiff must plausibly allege that his injury animating the RICO claim is associated with his business or property by reason of the defendant's violation of the RICO laws. Absent these allegations, the lawsuit must be dismissed. RICO standing is distinct from the more well-known concept of constitutional standing. For RICO claims, in addition to pleading a sufficiently specific injury, including allegations that the plaintiff has suffered known damages (as opposed to mere speculative or unprovable damages), the plaintiff must allege that he suffered an injury to his business or property that bears some causal relationship to the alleged act or acts that violated RICO.

## **Summary**

For a plaintiff to succeed in a RICO claim, they must demonstrate a specific injury to their business or property that is causally linked to the defendant's alleged RICO violation. This requirement is distinct from constitutional standing and necessitates showing a concrete financial loss or deprivation of property use or transfer. This information is generally applicable to RICO claims and is not limited to specific cases.

## [RICO: A Primer](#)

## **Extract**

To prove a violation of Section 1962(b), a plaintiff must prove the following elements: \* Existence of an enterprise; \* The enterprise engaged in, or its activities affected, interstate or foreign commerce; \* The defendant acquired or maintained, directly or indirectly, an interest in or control of the enterprise; and \* The defendant acquired or maintained the interest through a pattern of racketeering activity or through collection of an unlawful debt. Courts have held that a plaintiff must allege a specific nexus between control of the named enterprise and the alleged racketeering activity. ... To prove a violation of Section 1962(c), a plaintiff must prove the following elements: \* Existence of an enterprise; \* The enterprise engaged in, or its activities affected, interstate or foreign commerce; \* The defendant was employed by or was associated with the enterprise; \* The defendant conducted or participated, either directly or indirectly, in the conduct of the affairs of the enterprise; and \* The defendant participated in the affairs of the enterprise through a pattern of racketeering activity or collection of unlawful debt.

## **Summary**

Elements a plaintiff must prove to establish a violation of Sections 1962(b) and 1962(c) of the RICO statute. These elements include the existence of an enterprise, the enterprise's engagement in or effect on interstate or foreign commerce, and the defendant's involvement with the enterprise through a

pattern of racketeering activity. This information is crucial for understanding what a plaintiff must demonstrate to succeed in a RICO claim, which is relevant to obtaining summary judgment.

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

### **Extract**

Second, to prove most types of RICO claims, the plaintiff must plead that the defendant committed some qualifying criminal action, the most common of which is mail, wire or securities fraud. Business deals gone sour do not count. Rather, the plaintiff must be able to prove the elements of the asserted crime, and often an intent to defraud. If there is nothing criminal in nature about the complained-of conduct, RICO should not apply. It is an abuse of the RICO statute to attempt to shoehorn ordinary business or contractual disputes into a civil RICO claim. Third, the plaintiff must plead a pattern of racketeering activity for most RICO claims. If the alleged conduct occurred once or twice, or was not continuous, it cannot form a pattern of conduct sufficient to support a RICO claim. And oftentimes, because there is a fraud component, those instances must be particularly identified in the plaintiff's pleading—a barrier that can prove difficult to accomplish. 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. Fifth, a RICO claim cannot exist without some nexus to interstate commerce. If the alleged conduct does not affect interstate commerce, it must be dismissed.

### **Summary**

Detailed explanation of the elements a plaintiff must establish to prove a RICO claim, which is relevant to understanding what must be shown to obtain summary judgment. It outlines the need to prove a qualifying criminal action, a pattern of racketeering activity, distinctiveness between the person and enterprise, and a nexus to interstate commerce.

## [SCOTUS Clarified RICO's Domestic Injury Requirement, Did Not Create New Civil Right Of Action For Enforcing Arbitration Awards](#)

### **Extract**

Post-Smagin, civil RICO remains a longshot claim with heavy burdens and discouraging odds. Smagin neither changes the complex substantive standards applicable to civil RICO claims nor increases a plaintiff's chances

of prevailing on the merits of such claims. Instead, the Supreme Court merely confirmed that foreign plaintiffs can meet the domestic injury requirement, which is but one of the many requirements needed to substantiate a civil RICO claim. Would-be plaintiffs still must overcome highly-burdensome challenges inherent in civil RICO claims, including exacting requirements to establish a RICO enterprise, a pattern of racketeering activity and the elements of specifically-enumerated predicate acts. When claims are fraud-based (most civil RICO theories are), the heightened specificity requirements of Rule 9 of the Federal Rules of Civil Procedure compound each of these burdens.

## **Summary**

The passage provides insight into the burdens and requirements a plaintiff must meet to substantiate a civil RICO claim, which are relevant to obtaining summary judgment. It highlights the need to establish a RICO enterprise, a pattern of racketeering activity, and the elements of specifically-enumerated predicate acts, along with meeting the heightened specificity requirements of Rule 9 for fraud-based claims.

### [RICO: A Primer](#)

## **Extract**

To prove a violation of Section 1962(b), a plaintiff must prove the following elements: \* Existence of an enterprise; \* The enterprise engaged in, or its activities affected, interstate or foreign commerce; \* The defendant acquired or maintained, directly or indirectly, an interest in or control of the enterprise; and \* The defendant acquired or maintained the interest through a pattern of racketeering activity or through collection of an unlawful debt. Courts have held that a plaintiff must allege a specific nexus between control of the named enterprise and the alleged racketeering activity. ... To prove a violation of Section 1962(c), a plaintiff must prove the following elements: \* Existence of an enterprise; \* The enterprise engaged in, or its activities affected, interstate or foreign commerce; \* The defendant was employed by or was associated with the enterprise; \* The defendant conducted or participated, either directly or indirectly, in the conduct of the affairs of the enterprise; and \* The defendant participated in the affairs of the enterprise through a pattern of racketeering activity or collection of unlawful debt.

## **Summary**

To obtain summary judgment on a RICO claim, a plaintiff must demonstrate specific elements depending on the section of the RICO Act being invoked. For Section 1962(b), the plaintiff must show the existence of an enterprise, its engagement in or effect on interstate commerce, the defendant's acquisition or maintenance of an interest in the enterprise through racketeering, and a specific nexus between control of the enterprise and the

racketeering activity. For Section 1962(c), the plaintiff must show the existence of an enterprise, its engagement in or effect on interstate commerce, the defendant's association with the enterprise, and the defendant's participation in the enterprise's affairs through racketeering.

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