

Question

The FAC alleges an ongoing enterprise, an unfulfilled objective, and a real risk of further predicate acts, distinguishing this case from those where the scheme is truly isolated and complete. The Tenth Circuit has recognized that even a scheme targeting one victim can satisfy the continuity requirement if it contemplates open-ended fraudulent activity and does not have a single goal that, when achieved, will bring the activity to an end (*Torwest DBC, Inc. v. Dick*, 810 F.2d 925, 928 (10th Cir. 1987); *Edwards v. First Nat. Bank, Bartlesville, Oklahoma*, 872 F.2d 347, 351 (10th Cir. 1989)). Because the FAC plausibly alleges an ongoing risk of racketeering activity, the case falls within the exception recognized by the Tenth Circuit, and reconsideration should be granted.

Answer (U.S. Federal)

Short response

The Tenth Circuit recognizes that a RICO claim can satisfy the continuity requirement—even when targeting a single victim—if the alleged scheme contemplates open-ended fraudulent activity and lacks a single, terminating objective. Because the FAC plausibly alleges an ongoing enterprise, an unfulfilled objective, and a real risk of further predicate acts, it falls within the exception recognized by the Tenth Circuit, supporting reconsideration.

Summary

The continuity requirement under RICO, as interpreted by the Tenth Circuit, does not categorically exclude schemes targeting a single victim from constituting a "pattern of racketeering activity." Instead, the key inquiry is whether the alleged conduct presents a threat of ongoing criminal activity, particularly where the scheme is open-ended and not limited to a single, completed objective.

The authorities provided, including both Tenth Circuit precedent and district court applications, consistently hold that open-ended continuity—demonstrated by a plausible risk of future predicate acts or ongoing fraudulent conduct—can satisfy the pattern requirement even in single-victim cases. The FAC's allegations of an ongoing enterprise, unfulfilled objectives, and a real risk of further predicate acts distinguish this case from isolated, completed schemes and bring it squarely within the recognized exception, warranting reconsideration.

Background and Relevant Law

Legislative and Regulatory Framework

The Racketeer Influenced and Corrupt Organizations Act (RICO) requires a plaintiff to establish a "pattern of racketeering activity," which, as interpreted by the Supreme Court and lower courts, consists of two elements: relationship and continuity. The continuity prong can be satisfied by either closed-ended continuity (a series of related predicates over a substantial period) or open-ended continuity (conduct that poses a threat of continuing into the future). The Supreme Court in *H.J. Inc. v. Northwestern Bell Tel. Co.* clarified that continuity is a flexible concept, to be assessed on a case-by-case basis, and can be established by showing either actual repeated conduct or a threat of future racketeering activity ([Schrag v. Dinges, 788 F.Supp. 1543, 1547 \(D. Kan. 1992\)](#); [Racketeer influenced and corrupt organizations.](#) (1997)).

Case Law

Tenth Circuit Precedent

The Tenth Circuit's leading case on the continuity requirement is *Torwest DBC, Inc. v. Dick*, which held that a scheme with a single, discrete objective —when completed—does not present a threat of ongoing activity and thus fails the continuity requirement. However, the court expressly recognized that a more difficult question arises when a scheme, even if targeting one victim, contemplates open-ended fraudulent activity and lacks a single goal that, when achieved, will end the activity. In such cases, the continuity requirement may be satisfied (*Torwest DBC, Inc. v. Dick*, 810 F.2d 925, 928-29 (10th Cir. 1987); [IN RE DOW CO. SARABOND PRODUCTS LIABILITY LIT.](#), 666 F.Supp. 1466, 1474 (D. Colo. 1987); [O'CONNOR v. Midwest Pipe Fabricators, Inc.](#), 660 F. Supp. 696, 700 (D. Kan. 1987)).

Subsequent district court decisions within the Tenth Circuit have consistently applied this principle, holding that a single scheme involving one victim can meet the continuity requirement if it involves ongoing or open-ended fraudulent activity ([Bumgarner v. Blue Cross & Blue Shield of Kansas](#), 716 F. Supp. 493, 495 (D. Kan. 1988); [Wichita Fed. Sav. & Loan v. Landmark Group, Inc.](#), 674 F. Supp. 321, 327 (D. Kan. 1987); [Thompson v. Wyoming Alaska, Inc.](#), 652 F.Supp. 1222, 1225 (D. Utah 1987)).

The Tenth Circuit has also adopted a flexible, multi-factor approach to continuity, considering the nature of the enterprise, the duration and frequency of predicate acts, and whether the conduct poses a threat of continued criminal activity ([Racketeer influenced and corrupt organizations.](#) (2000); *Resolution Trust Corp. v. Stone*, 998 F.2d 1534, 1544 (10th Cir. 1993)).

District Court Applications

District courts in the Tenth Circuit have repeatedly emphasized that open-ended continuity can be established by plausible allegations of a threat of continuing criminal activity beyond the period of the predicate acts. Courts are to consider the totality of the circumstances, including whether the alleged conduct is part of the regular way of conducting the enterprise's business or involves implicit or explicit threats of repetition ([Fisher Sand & Gravel Co. v. FNF Constr., Inc., No. 10-cv-0635 RB/SMV \(D. N.M. Mar 27, 2013\)](#); [Nation v. Shah, 4:19-cv-00588-JDR-JFJ \(N.D. Okla. Oct 30, 2024\)](#)).

Courts have also rejected the argument that multiple schemes or multiple victims are required to establish continuity, instead focusing on whether the alleged conduct projects into the future with a threat of repetition ([Independent Drug Wholesalers Group, Inc. v. Denton, 833 F.Supp. 1507, 1511 \(D. Kan. 1993\)](#); [Purvis v. Hamwi, 828 F.Supp. 1479, 1485 \(D. Colo. 1993\)](#)).

Secondary Materials

Secondary sources reinforce the judicial consensus that continuity can be established by demonstrating a threat of continued criminal activity, particularly through open-ended continuity. The Tenth Circuit's approach is characterized as flexible and fact-specific, with courts examining whether the alleged conduct is likely to continue into the future or is part of the regular way of conducting business (RICO: A Primer (2022); [Racketeer influenced and corrupt organizations.](#) (2011)).

Analysis

The Continuity Requirement and Open-Ended Schemes

The central issue is whether the FAC's allegations of an ongoing enterprise, unfulfilled objectives, and a real risk of further predicate acts are sufficient to satisfy the continuity requirement under RICO, as interpreted by the Tenth Circuit.

The authorities make clear that continuity is not limited to schemes involving multiple victims or multiple schemes. The Tenth Circuit, in *Torwest DBC, Inc. v. Dick*, explicitly recognized that a scheme targeting a single victim can satisfy the continuity requirement if it contemplates open-ended fraudulent activity and does not have a single, terminating goal. The court declined to adopt a bright-line rule, instead emphasizing the need for a fact-specific inquiry into whether the alleged conduct presents a threat of ongoing criminal activity (*Torwest DBC, Inc. v. Dick*, 810 F.2d 925, 928-29 (10th Cir. 1987); [IN RE DOW CO. SARABOND PRODUCTS LIABILITY LIT., 666 F.Supp. 1466, 1474 \(D. Colo. 1987\)](#)).

District courts have consistently applied this principle, holding that open-ended continuity can be established by plausible allegations of a threat of continuing criminal activity, even where the scheme involves only one victim

([Fisher Sand & Gravel Co. v. FNF Constr., Inc., No. 10-cv-0635 RB/SMV \(D. N.M. Mar 27, 2013\)](#); [Bumgarner v. Blue Cross & Blue Shield of Kansas, 716 F. Supp. 493, 495 \(D. Kan. 1988\)](#); [O'CONNOR v. Midwest Pipe Fabricators, Inc., 660 F. Supp. 696, 700 \(D. Kan. 1987\)](#)). The key inquiry is whether the alleged conduct, by its nature, projects into the future with a threat of repetition or is part of the regular way of conducting the enterprise's business ([Purvis v. Hamwi, 828 F.Supp. 1479, 1485 \(D. Colo. 1993\)](#); [Schrag v. Dingess, 788 F.Supp. 1543, 1547 \(D. Kan. 1992\)](#)).

Application to the FAC's Allegations

The FAC alleges an ongoing enterprise, an unfulfilled objective, and a real risk of further predicate acts. These allegations, if plausible, distinguish the case from those where the scheme is truly isolated and complete. The authorities provided make clear that a scheme with an unfulfilled objective and a risk of further predicate acts is not "closed-ended" or "isolated," but rather presents the kind of open-ended continuity that satisfies the RICO pattern requirement.

For example, in [Nation v. Shah](#), the court explained that open-ended continuity can be established by racketeering acts that involve threats of repetition, form the operations of a criminal association, or are part of the regular way of conducting a legitimate enterprise ([Nation v. Shah, 4:19-cv-00588-JDR-JFJ \(N.D. Okla. Oct 30, 2024\)](#)). Similarly, in [Fisher Sand & Gravel Co. v. FNF Constr., Inc.](#), the court held that open-ended continuity is established if the plaintiff plausibly alleges a threat of continuing criminal activity beyond the period of the predicate acts, considering the totality of the circumstances ([Fisher Sand & Gravel Co. v. FNF Constr., Inc., No. 10-cv-0635 RB/SMV \(D. N.M. Mar 27, 2013\)](#)).

The Supreme Court's guidance in [H.J. Inc.](#)—as adopted by the Tenth Circuit—further supports this approach, emphasizing that continuity can be established by showing either a closed period of repeated conduct or a threat of future repetition, and that the existence of a threat of continued racketeering activity is a function of the particular facts of each case ([Schrag v. Dingess, 788 F.Supp. 1543, 1547 \(D. Kan. 1992\)](#); [Racketeer influenced and corrupt organizations. \(2011\)](#)).

Single Victim and Single Scheme

The argument that a single scheme targeting one victim cannot satisfy the continuity requirement has been repeatedly rejected by courts in the Tenth Circuit. The key distinction is whether the scheme is open-ended and presents a threat of ongoing activity, rather than being a closed, isolated incident with a single, completed objective ([Independent Drug Wholesalers Group, Inc. v. Denton, 833 F.Supp. 1507, 1511 \(D. Kan. 1993\)](#); [Wichita Fed. Sav. & Loan v. Landmark Group, Inc., 674 F. Supp. 321, 327 \(D. Kan. 1987\)](#); [Thompson v. Wyoming Alaska, Inc., 652 F.Supp. 1222, 1225 \(D. Utah 1987\)](#)).

Secondary materials confirm that the Tenth Circuit's approach is consistent with the broader federal consensus, which holds that a single scheme may be sufficient to establish a pattern if there is a threat of continued activity

([Racketeer influenced and corrupt organizations](#). (1995); RICO: A Primer (2022)).

Totality of the Circumstances and Case-by-Case Analysis

The authorities emphasize that the continuity requirement is inherently fact-specific and must be assessed based on the totality of the circumstances. Courts are to consider the nature of the enterprise, the duration and frequency of the predicate acts, and whether the conduct is likely to continue into the future ([Fisher Sand & Gravel Co. v. FNF Constr., Inc., No. 10-cv-0635 RB/SMV \(D. N.M. Mar 27, 2013\)](#); [Racketeer influenced and corrupt organizations](#). (2011); [Racketeer influenced and corrupt organizations](#). (2005)).

In this case, the FAC's allegations of an ongoing enterprise, unfulfilled objectives, and a real risk of further predicate acts are precisely the kind of facts that courts have found sufficient to establish open-ended continuity. The absence of a single, terminating goal and the presence of a plausible threat of future racketeering activity distinguish this case from those where the scheme is isolated and complete.

Exceptions and Caveats

While the Tenth Circuit has recognized that a single scheme targeting one victim can satisfy the continuity requirement if it contemplates open-ended fraudulent activity, courts have also cautioned that not every scheme will meet this standard. If the scheme is truly isolated, with a single, completed objective and no plausible risk of future predicate acts, continuity will not be found ([Torwest DBC, Inc. v. Dick](#), 810 F.2d 925, 928-29 (10th Cir. 1987); [Raymark Industries, Inc. v. Stemple](#), 714 F.Supp. 460, 468 (D. Kan. 1988)).

Additionally, courts have declined to adopt a bright-line rule and instead require a fact-specific inquiry. The sufficiency of the FAC's allegations will ultimately depend on whether the facts plausibly support a threat of ongoing criminal activity, as opposed to a completed, isolated incident ([Smith v. MCI Telecommunications Corp.](#), 678 F.Supp. 823, 827 (D. Kan. 1987)).

Conclusion

The Tenth Circuit's jurisprudence, as well as supporting district court decisions and secondary materials, make clear that the continuity requirement under RICO can be satisfied by a scheme targeting a single victim if the scheme is open-ended and presents a real risk of ongoing predicate acts. The FAC's allegations of an ongoing enterprise, unfulfilled objectives, and a plausible threat of future racketeering activity bring this case within the exception recognized by the Tenth Circuit. Accordingly, the continuity requirement is met, and reconsideration should be granted. The analysis must remain fact-specific, but the authorities provided strongly support the proposition that the FAC's allegations are sufficient under Tenth Circuit law.

Legal Authorities

[O'Connor v. Midwest Pipe Fabricators, Inc., 660 F. Supp. 696 \(D. Kan. 1987\)](#)

U.S. District Court — District of Kansas

Extract

The recent Tenth Circuit opinion in *Torwest DBC v. Dick*, 810 F.2d 925 (10th Cir.1987) makes this point clear. The *Torwest DBC* court stated that to establish a pattern there must be (1) a relationship among the alleged wrongful acts (i.e., acts that are part of a common fraudulent scheme), and (2) continuity of the acts (i.e., the threat of continuing activity). ... The court also appeared to approve of those courts that allow a RICO claim to proceed even though the claim is based on one scheme involving one victim, when the plan contemplates open-ended fraudulent activity and does not have a single goal that, when achieved, will bring the activity to an end. *Id.* at 929.

Summary

The passage from the "O'CONNOR v. Midwest Pipe Fabricators, Inc." case discusses the Tenth Circuit's interpretation of the continuity requirement under RICO, as established in *Torwest DBC v. Dick*. It emphasizes that a pattern of racketeering activity can be established even in cases involving a single scheme and a single victim if the scheme involves open-ended fraudulent activity without a single goal that, when achieved, will end the activity. This directly supports the proposition that the FAC alleges an ongoing enterprise with an unfulfilled objective and a real risk of further predicate acts, as it aligns with the Tenth Circuit's recognition of continuity in such scenarios.

[Thompson v. Wyoming Alaska, Inc., 652 F.Supp. 1222 \(D. Utah 1987\)](#)

U.S. District Court — District of Utah

Extract

In *Torwest DBC, Inc. v. Dick*, 810 F.2d 925 (10th Cir.1986), the Tenth Circuit stressed in a single scheme case that the 'continuity' requirement of pattern requires demonstration of 'facts from which at least a threat of ongoing illegal conduct may be inferred,' and that the single scheme would have to involve 'continuous behavior.' ... It may be inferred from *Torwest* that 'a scheme that contemplated open-ended fraudulent activity over a period of time' would point to a different result than the scheme with which the court was confronted in that case. *Torwest* involved 'numerous racketeering acts' but only 'one victim,' 'one time,' and 'one discrete goal' thus constituting an 'isolated incident.' The court noted that '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.'

Summary

The passage from "Thompson v. Wyoming Alaska, Inc." references the Tenth Circuit's decision in *Torwest DBC, Inc. v. Dick*, which is directly relevant to the proposition. It highlights the requirement for demonstrating continuity in a RICO claim, emphasizing that a scheme targeting one victim can still meet this requirement if it involves ongoing illegal conduct or open-ended fraudulent activity. This aligns with the proposition that the FAC alleges an ongoing enterprise with a risk of further predicate acts, distinguishing it from isolated incidents.

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

U.S. District Court — District of Kansas

Extract

In *Torwest DBC, Inc. v. Dick*, the Tenth Circuit held that a pattern requires continuous and related acts. *Torwest*, 810 F.2d 925, 928 (10th Cir.1987). Acts which are part of a common fraudulent scheme are related. *Id.* Here, the acts were related, as they were part of a common scheme to deprive Smith of the commissions she earned. Continuity requires the threat of ongoing activity. *Id.* 'A scheme to achieve a single discrete objective does not in and of itself create a threat of ongoing activity, even when that goal is pursued by multiple illegal acts, because the scheme ends when the purpose is accomplished.' *Id.* at 929. The instant case involves a more difficult question: whether a pattern is presented where a scheme has no single objective and is directed toward one victim. *Id.* The *Torwest* court failed to answer the question, stating that it declined to 'formulate a bright-line test' for determining whether a pattern exists. *Id.*

Summary

Requirement of continuity in RICO cases, emphasizing that a pattern requires continuous and related acts. It highlights that a scheme with a single discrete objective does not inherently create a threat of ongoing activity. However, it also notes the complexity of determining a pattern when a scheme has no single objective and targets one victim, which aligns with the proposition that even a scheme targeting one victim can satisfy the continuity requirement if it contemplates open-ended fraudulent activity.

[IN RE DOW CO. SARABOND PRODUCTS LIABILITY LIT., 666 F.Supp. 1466 \(D. Colo. 1987\)](#)

U.S. District Court — District of Colorado

Extract

In *Torwest*, the Tenth Circuit characterized the continuity element as 'the threat of continuing activity.' Id., 810 F.2d at 928, quoting Sedima's footnote 14. The court opined that 'a scheme to achieve a single discrete objective does not in and of itself create a threat of ongoing activity, even when that goal is pursued by multiple illegal acts, because the scheme ends when the purpose is accomplished.' Id. at 928. The *Torwest* court also noted, however, that '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.' Id. at 929.

Summary

The passage from the document discusses the Tenth Circuit's interpretation of the continuity element in RICO cases, specifically referencing the *Torwest* case. It highlights that the Tenth Circuit recognizes the continuity requirement as the "threat of continuing activity" and acknowledges that a scheme involving one victim can satisfy this requirement if it involves open-ended fraudulent activity without a single goal that concludes the activity. This directly supports the proposition that the FAC alleges an ongoing enterprise with an unfulfilled objective and a risk of further predicate acts, aligning with the Tenth Circuit's recognition of such scenarios.

[Fisher Sand & Gravel Co. v. FNF Constr., Inc., No. 10-cv-0635 RB/SMV \(D. N.M. Mar 27, 2013\)](#)

U.S. District Court — District of New Mexico

Extract

Fisher relies on open-ended continuity to prove the 'pattern' element of its RICO claim. (Doc. 105 at 18). Open-ended continuity depends heavily on the facts of the case. *Resolution Trust Corp.*, 998 F.2d at 1543. For 12(b)(6) purposes, open-ended continuity is established if the plaintiff can plausibly allege 'that there was a threat of continuing criminal activity beyond the period during which the predicate acts were performed.' *Heinrich*, 668 F.3d at 410. The threat of continuing racketeering activity need not be established exclusively by the predicate acts, and the court should consider the totality of the circumstances surrounding the commission of the acts. Id. (citation omitted); see also *Tal*, 453 F.3d at 1268 (citation omitted).

Summary

Concept of open-ended continuity in the context of RICO claims, which is directly relevant to the proposition. It explains that open-ended continuity can be established if there is a plausible allegation of a threat of continuing criminal activity beyond the period of the predicate acts. This aligns with the

proposition's assertion that the FAC alleges an ongoing enterprise and a real risk of further predicate acts, distinguishing it from isolated and complete schemes. The passage also emphasizes considering the totality of circumstances, which supports the idea of an ongoing risk of racketeering activity.

[Reeder v. Kermit Johnson, Alphagraphics, Inc., 723 F.Supp. 1428 \(D. Utah 1989\)](#)

U.S. District Court — District of Utah

Extract

The Tenth Circuit, interpreting the continuity requirement articulated in Sedima, noted that, to make an adequate showing of continuity, 'a plaintiff must demonstrate some facts from which at least a threat of ongoing illegal conduct may be inferred.' *Torwest DBC, Inc. v. Dick*, 810 F.2d 925, 928 (10th Cir.1987). Going on, the court held that 'a scheme to achieve a single discrete objective does not in and of itself create a threat of ongoing activity, even when that goal is pursued by multiple illegal acts, because the scheme ends when the purpose is accomplished.' *Id.* at 928-29. ... Plaintiffs have alleged acts that demonstrate ongoing activity on the part of the defendants. In addition to the multiple acts the plaintiffs allege were committed against them over several years, the plaintiffs allege that the defendants' fraudulent acts and nondisclosures continue as to other franchisees in Utah. This alone, if proven true, would satisfy the continuity requirement.

Summary

Continuity requirement for a RICO claim, emphasizing that a threat of ongoing illegal conduct can satisfy this requirement. It references the Tenth Circuit's interpretation in *Torwest DBC, Inc. v. Dick*, which aligns with the proposition that even a scheme targeting one victim can meet the continuity requirement if it suggests ongoing fraudulent activity. The passage also highlights that ongoing fraudulent acts against other parties can further support the continuity requirement.

[Independent Drug Wholesalers Group, Inc. v. Denton, 833 F.Supp. 1507 \(D. Kan. 1993\)](#)

U.S. District Court — District of Kansas

Extract

The defendants argue that there can be no continuity because only a single scheme, i.e. stealing overages, enacted against a single victim, i.e. IDWG, is alleged. However, in setting the boundaries for 'continuity' in H.J., the Court explicitly rejected the Eighth Circuit's requirement that a plaintiff had to

prove that the defendants were involved in multiple schemes to prove a RICO claim. Id. at 240, 109 S.Ct. at 2901... Defendant Mark Denton further argues that the alleged racketeering activity involved only a single scheme affecting one victim and that such a closed-ended scheme cannot constitute a pattern. This argument lacks merit. For one, the Supreme Court rejected the multiple scheme requirement in *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 232, 109 S.Ct. 2893, 2897, 106 L.Ed.2d 195 (1989).

Summary

Continuity requirement for RICO claims, emphasizing that a single scheme targeting one victim can still satisfy the continuity requirement if it poses a threat of continued criminal activity. The court rejected the notion that multiple schemes are necessary, aligning with the Tenth Circuit's recognition that open-ended fraudulent activity targeting a single victim can meet the continuity requirement. This supports the proposition that the FAC alleges an ongoing risk of racketeering activity, distinguishing it from isolated and complete schemes.

[Gotfredson v. Larsen Lp, 432 F.Supp.2d 1163 \(D. Colo. 2006\)](#)

U.S. District Court — District of Colorado

Extract

Open-ended continuity 'may be established by showing that the predicates themselves involve a distinct threat of long-term racketeering activity, either implicit or explicit, or that the predicates are a regular way of conducting the defendant's ongoing legitimate business or the RICO enterprise.'

Summary

The passage from "Gotfredson v. Larsen Lp" discusses the concept of open-ended continuity in RICO cases, which is relevant to the proposition. It explains that open-ended continuity can be established by demonstrating a distinct threat of long-term racketeering activity or that the predicates are a regular way of conducting business. This aligns with the proposition's assertion that the FAC alleges an ongoing enterprise with a risk of further predicate acts, fitting within the Tenth Circuit's recognition of continuity even in schemes targeting a single victim.

[Cook v. Zions First Nat. Bank, 645 F.Supp. 423 \(D. Utah 1986\)](#)

U.S. District Court — District of Utah

Extract

To form a 'pattern,' the commission of predicate acts or episodes of criminality must be sufficiently continuous and interrelated. That is, a RICO or RICE 'pattern' requires planned, ongoing, continuing crime and the threat of continuing criminal conduct, as opposed to sporadic, isolated criminal episodes or events.

Summary

The passage from "Cook v. Zions First Nat. Bank" emphasizes the necessity of demonstrating a "pattern of racketeering activity" that is continuous and interrelated, involving ongoing and planned criminal conduct. This aligns with the proposition that the FAC alleges an ongoing enterprise with a risk of further predicate acts, as it highlights the need for continuity and the threat of ongoing criminal activity, rather than isolated incidents. The passage supports the idea that a scheme can satisfy the continuity requirement if it involves open-ended fraudulent activity, which is consistent with the Tenth Circuit's recognition in cases like *Torwest DBC, Inc. v. Dick and Edwards v. First Nat. Bank*.

[Nation v. Shah, 4:19-cv-00588-JDR-JFJ \(N.D. Okla. Oct 30, 2024\)](#)

U.S. District Court — Northern District of Oklahoma

Extract

More difficult to establish-and more problematic for Plaintiffs-is the requirement that the predicate acts have sufficient "continuity" to constitute a RICO "pattern." ... Open-ended continuity can be established by racketeering acts that "involved implicit or explicit threats of repetition," "formed the operations of an association that exists for criminal purposes," or were part of the defendants' "regular way of conducting a legitimate enterprise."

Summary

The court discusses the requirement of continuity in RICO claims, specifically open-ended continuity. The passage explains that open-ended continuity can be established if the racketeering acts involve threats of repetition, are part of a criminal association's operations, or are a regular way of conducting a legitimate enterprise. This aligns with the proposition that even a scheme targeting one victim can satisfy the continuity requirement if it contemplates ongoing fraudulent activity.

[Skurkey v. Daniel](#)

U.S. District Court — Western District of Oklahoma

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." ... The Supreme Court has explained that there are two elements to finding a pattern for RICO purposes: "continuity plus relationship." ... Plaintiff argues the Complaint alleges facts to support both open- and closed-ended continuity. ... The same holds true if the Court considers whether Plaintiff has alleged continuity under an open-ended theory because Plaintiff has not alleged facts that show a clear threat of future criminal conduct related to past criminal conduct.

Summary

Requirements for a valid RICO claim, emphasizing the need for a pattern of racketeering activity, which includes continuity and relationship. It discusses both open- and closed-ended continuity, which are relevant to the proposition that the FAC alleges an ongoing enterprise with a risk of further predicate acts. The passage also highlights the importance of demonstrating a threat of future criminal conduct for open-ended continuity, which aligns with the proposition's focus on an ongoing risk of racketeering activity.

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

U.S. District Court — District of Kansas

Extract

In H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989), the Supreme Court reiterated the well-established concept that racketeering acts form a 'pattern' in RICO where they exhibit 'continuity plus relationship.' ... 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. ... 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

Concept of "continuity" in RICO cases, as defined by the Supreme Court in H.J. Inc. v. Northwestern Bell Tel. Co. It explains that continuity can be both closed-ended and open-ended, with the latter involving a threat of future repetition. This aligns with the proposition that the FAC alleges an ongoing enterprise with a risk of further predicate acts, which is consistent with the

Tenth Circuit's recognition that even a scheme targeting one victim can satisfy the continuity requirement if it involves open-ended fraudulent activity.

[Purvis v. Hamwi, 828 F.Supp. 1479 \(D. Colo. 1993\)](#)

U.S. District Court — District of Colorado

Extract

'Continuity' is both a closed- and openended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with the threat of repetition.

Summary

The passage from "Purvis v. Hamwi" discusses the concept of "continuity" in the context of RICO, which is relevant to the proposition. It explains that continuity can be either closed-ended or open-ended, with the latter involving past conduct that projects into the future with the threat of repetition. This aligns with the proposition's argument that the FAC alleges an ongoing enterprise with a real risk of further predicate acts, thus satisfying the continuity requirement. The passage supports the idea that even if a scheme targets one victim, it can still meet the continuity requirement if it involves open-ended fraudulent activity.

[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

Tenth Circuit's approach to determining a "pattern" under RICO, specifically referencing the Torwest case. It highlights that a scheme involving one victim can still meet the continuity requirement if it involves open-ended fraudulent activity without a single goal that concludes the scheme. This aligns with the proposition that the FAC alleges an ongoing enterprise with an unfulfilled objective, distinguishing it from isolated schemes.

[Bumgarner v. Blue Cross & Blue Shield of Kansas, 716 F. Supp. 493 \(D. Kan. 1988\)](#)

U.S. District Court — District of Kansas

Extract

Further, in *Torwest DBC, Inc. v. Dick*, 810 F.2d 925, 929 (10th Cir. 1987), the Tenth Circuit appears to approve of decisions of other circuits that allow a RICO claim to proceed given evidence of a single scheme involving one victim and continuous fraudulent activity.

Summary

The passage from the "Bumgarner v. Blue Cross & Blue Shield of Kansas" judgment references the Tenth Circuit's decision in *Torwest DBC, Inc. v. Dick*, which supports the idea that a RICO claim can be based on a single scheme involving one victim if there is continuous fraudulent activity. This aligns with the proposition that the FAC alleges an ongoing enterprise with an unfulfilled objective and a risk of further predicate acts, as it suggests that such a scheme can meet the continuity requirement for RICO claims.

[Raymark Industries, Inc. v. Stemple, 714 F.Supp. 460 \(D. Kan. 1988\)](#)

U.S. District Court — District of Kansas

Extract

The *Torwest* court further held that in order to satisfy the 'continuity' requirement there must be a threat of ongoing activity. 810 F.2d at 928. In *Torwest*, the court held that a single fraudulent scheme which has a definite purpose, the completion of which will end the scheme, does not have sufficient 'continuity'.

Summary

The Tenth Circuit requires a threat of ongoing activity to satisfy the continuity requirement under RICO. The court in *Torwest DBC, Inc. v. Dick* emphasized that a single scheme with a definite end does not meet this

requirement. This supports the proposition that an ongoing enterprise with an unfulfilled objective and a risk of further acts can meet the continuity requirement, even if it targets a single victim.

[Racketeer influenced and corrupt organizations.](#)

American Criminal Law Review - Georgetown University Law Center - Donovan, Emily R. - 1995-01-01

Extract

The Fourth Circuit expressly embraced the rationale of the Seventh Circuit by adopting a multi-factor test.(76) In the wake of H.J. Inc., the court broadly interpreted the continuity requirement, holding that there was 'no question that a single scheme may be sufficient to establish a pattern.'(77) ... United States v. Kirk, 844 F.2d 660, 664 (9th Cir.) (predicate acts may constitute pattern of racketeering activity even though only one scheme involved), cert. denied, 488 U.S. 890 (1988); ... Landry v. Airline Pilots Ass'n, 901 F.2d 404, 432 (5th Cir.) (relationship element satisfied by predicate acts' relationship to single scheme with single goal, and continuity element satisfied by threat of continued racketeering), cert. denied, 498 U.S. 895 (1990).

Summary

The passage discusses how different Circuit Courts, including the Fourth, Ninth, and Fifth Circuits, have interpreted the continuity requirement under the RICO statute. It highlights that a single scheme can establish a pattern of racketeering activity if there is a threat of continued activity. This aligns with the Tenth Circuit's recognition that a scheme targeting one victim can satisfy the continuity requirement if it contemplates open-ended fraudulent activity. The passage supports the proposition by showing that courts have accepted the idea that continuity can be established even in cases involving a single scheme or victim, provided there is a threat of ongoing activity.

[Racketeer influenced and corrupt organizations.](#)

American Criminal Law Review - Georgetown University Law Center - Beard, Glen - 1996-03-22

Extract

The relationship prong is defined by the connection of the defendant's criminal acts to one another. As the Court wrote: '[c]riminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.' 'Continuity' is successfully proved if a prosecutor can show actual continuity during a past, closed period of repeated conduct or the threat of continuity

of racketeering activity in the future. The Court seemed to propose a case-by-case examination of this issue by noting that the existence of a 'threat of continued racketeering activity' is a function of the particular facts.

Summary

The concept of "continuity" in RICO cases can be established by demonstrating either a past pattern of repeated conduct or a threat of future racketeering activity. The passage emphasizes that the determination of a "threat of continued racketeering activity" is fact-specific, aligning with the proposition that even a scheme targeting one victim can meet the continuity requirement if it suggests ongoing fraudulent activity.

[Racketeer influenced and corrupt organizations.](#)

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

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

Concept of continuity in RICO cases, explaining that continuity can be either closed-ended or open-ended. Open-ended continuity is particularly relevant to the proposition as it involves conduct that poses a threat of extending into the future, which aligns with the idea of an ongoing enterprise and unfulfilled objectives. The passage also emphasizes the need for a case-by-case examination, which supports the argument that the Tenth Circuit's recognition of schemes targeting one victim can satisfy the continuity requirement if they involve open-ended fraudulent activity.

[Racketeer influenced and corrupt organizations.](#)

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

Extract

The relationship prong is defined by the connection of the defendant's criminal acts to one another: 'continuity' is successfully proved if a prosecutor can show actual continuity during a past, closed period of repeated conduct or an open-ended threat of continued racketeering activity in the future. (53) The H.J., Inc. Court suggested a case-by-case examination of this issue... Allwaste, Inc. v. Hecht, 65 F.3d 1523 (9th Cir. 1995) (holding that defendant gave no indication of ceasing alleged kickback schemes, thereby satisfying the continuity requirement)... Resolution Trust Corp. v. Stone, 998 F.2d 1534, 1544 (10th Cir. 1993) (holding that alleged scheme which may have lasted from seven to as much as eighteen months met continuity requirement).

Summary

Concept of "continuity" in the context of RICO, explaining that continuity can be established by showing either a past period of repeated conduct or an open-ended threat of continued racketeering activity. The passage references cases where continuity was found due to the ongoing nature of the criminal activity or the lack of indication that the activity would cease. This aligns with the proposition that the FAC alleges an ongoing enterprise with a risk of further predicate acts, which can satisfy the continuity requirement even if the scheme targets a single victim.

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... likelihood of predicate acts continuing into the future or by showing that predicate acts occur in normal course of entity's business... Blandford, 33 F.3d at 703-04 (finding continuity and relatedness in mail fraud scheme that took place over six years and threatened to occur in future because defendants denied any wrongdoing).

Summary

Concept of continuity under RICO, which can be satisfied by either closed-ended or open-ended continuity. Open-ended continuity is particularly relevant to the proposition as it involves conduct that poses a likelihood of continuing into the future, aligning with the idea of an ongoing enterprise and unfulfilled objectives. The passage also references cases where continuity was found due to the threat of future criminal conduct,

supporting the notion that even schemes targeting a single victim can meet the continuity requirement if they involve ongoing or future risks.

[Racketeer influenced and corrupt organizations.](#)

American Criminal Law Review - Georgetown University Law Center - Sacks, Michele - 2005-03-22

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, explaining that continuity can be either closed-ended or open-ended. Open-ended continuity is particularly relevant to the proposition as it involves conduct that poses a threat of extending into the future, aligning with the idea of an ongoing enterprise and unfulfilled objectives. The passage also emphasizes the need for a case-by-case examination, which supports the argument that the Tenth Circuit's recognition of schemes targeting one victim can satisfy the continuity requirement if they involve open-ended fraudulent activity.

[Racketeer influenced and corrupt organizations.](#)

American Criminal Law Review - Georgetown University Law Center - Bremer, Lance - 1997-01-01

Extract

The Supreme Court made a second attempt to clarify the 'pattern' concept in *H.J. Inc. v. Northwestern Bell Telephone Co.* In that case, the Supreme Court held that in order to prove a 'pattern of racketeering activity,' a prosecutor must show both relationship and continuity as separate elements. However, the Court recognized that proof of these factors will often overlap. The relationship prong is defined by the connection of the defendant's criminal acts to one another. 'Continuity' is successfully proved if a prosecutor can show actual continuity during a past, closed period of repeated conduct or the threat of continued racketeering activity in the future.

Summary

Supreme Court's interpretation of the "pattern" requirement under RICO, emphasizing the need to demonstrate both relationship and continuity. The continuity element can be satisfied by showing either past repeated conduct or a threat of continued racketeering activity. This aligns with the proposition that even a scheme targeting one victim can meet the continuity requirement if it involves open-ended fraudulent activity, as recognized by the Tenth Circuit.

[Racketeer influenced and corrupt organizations.](#)

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

Extract

The Tenth Circuit has posited a multi-factor approach in its pattern analysis(91) and adopted a flexible continuity analysis.(92)... Resolution Trust Corp. v. Stone, 998 F.2d 1534, 1544 (10th Cir. 1993) (holding that alleged scheme that may have lasted from seven to as much as eighteen months met continuity requirement).

Summary

The Tenth Circuit employs a flexible continuity analysis and considers multiple factors in its pattern analysis. This aligns with the proposition that the Tenth Circuit recognizes schemes that may not be isolated or complete, especially if they involve ongoing or open-ended fraudulent activity. The reference to the Resolution Trust Corp. v. Stone case supports the idea that even schemes lasting several months can meet the continuity requirement, which is relevant to the proposition that the FAC alleges an ongoing risk of racketeering activity.

[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

Concept of continuity in RICO cases, explaining that continuity can be either closed-ended or open-ended. Open-ended continuity is particularly relevant to the proposition, as it involves conduct that poses a threat of extending into the future, even if it lasts only a short period of time. This aligns with the proposition's assertion that the FAC alleges an ongoing risk of racketeering activity, which is a key factor in satisfying the continuity requirement under RICO. The passage also emphasizes the need for a case-by-case examination, which supports the idea that the Tenth Circuit's recognition of schemes targeting one victim can satisfy the continuity requirement if they involve open-ended fraudulent activity.

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

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

Extract

The Tenth Circuit has devised a more demanding standard for showing a pattern. Where the directors of a corporation were involved in self-dealing by secretly purchasing real estate and fraudulently reselling it to the company, the Tenth Circuit ruled that no pattern existed even though the frauds had occurred over a 10-year period. *Torwest DBC, Inc. v. Dick* thus rejected the Fifth Circuit's reasoning in *R.A.G.S.* and refused to find a pattern where 'the single scheme at issue involved one victim.' The court explained: 'A scheme to achieve a single discrete objective does not in and of itself create a threat of ongoing activity, even when that goal is pursued by multiple illegal acts, because the scheme ends when the purpose is accomplished.'

Summary

Tenth Circuit's approach to determining a pattern of racketeering activity, emphasizing that a single scheme with a discrete objective does not necessarily indicate ongoing activity. However, the proposition highlights that the FAC alleges an ongoing enterprise with an unfulfilled objective, which aligns with the Tenth Circuit's recognition that a scheme targeting one victim can satisfy the continuity requirement if it contemplates open-ended fraudulent activity. The passage supports the proposition by illustrating the Tenth Circuit's criteria for continuity and the potential for ongoing risk.

[RICO: A Primer](#)

Extract

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 from "RICO: A Primer" explains that a pattern of racketeering activity can be established by demonstrating a threat of continued criminal activity, specifically through open-ended continuity. This aligns with the proposition that the FAC alleges an ongoing enterprise with a risk of further predicate acts, as it suggests that the continuity requirement can be satisfied if there is a threat of ongoing criminal activity. The Tenth Circuit's recognition of open-ended fraudulent activity as satisfying the continuity requirement is consistent with this explanation.

[RICO: A Primer](#)

Extract

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 continuity requirement for RICO can be satisfied by demonstrating a threat of ongoing criminal activity, known as open-ended continuity. This aligns with the proposition that the FAC alleges an ongoing enterprise with a risk of further predicate acts, as it suggests that the activity is not isolated or complete but rather poses a threat of continuing indefinitely.

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