

## **Question**

The court's order did not fully address the ongoing nature of the enterprise, the risk of further predicate acts, or the open-ended continuity required under RICO. A motion for reconsideration under Rule 59(e) is appropriate where the court has overlooked material facts or controlling law, or where necessary to prevent manifest injustice (*Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000)). Because the court overlooked material allegations and controlling law regarding open-ended continuity, reconsideration should be granted to allow the case to proceed on the merits or, at minimum, to permit amendment of the complaint.

## **Answer (U.S. Federal)**

### **Short response**

A motion for reconsideration under Rule 59(e) is well-supported where the court has overlooked material allegations and controlling law regarding open-ended continuity under RICO, as the pattern requirement demands a careful analysis of the ongoing nature of the enterprise and the risk of future predicate acts. The authorities provided demonstrate that reconsideration is appropriate to address these overlooked aspects, either to allow the case to proceed on the merits or to permit amendment of the complaint.

### **Summary**

The RICO statute requires plaintiffs to establish a "pattern of racketeering activity," which, as interpreted by the Supreme Court and the Tenth Circuit, includes both a relationship among predicate acts and a threat of continuing criminal activity—either through closed-ended or open-ended continuity. Open-ended continuity, in particular, is satisfied where the predicate acts pose a threat of future repetition or are part of the regular way an ongoing enterprise conducts its business, and courts must conduct a fact-specific inquiry to determine whether this standard is met.

If a court fails to address the ongoing nature of the enterprise, the risk of further predicate acts, or the open-ended continuity requirement, it overlooks material facts and controlling law central to the RICO analysis. In such circumstances, Rule 59(e) provides a mechanism for reconsideration to prevent manifest injustice, and the authorities confirm that such a motion is appropriate to ensure the case is properly adjudicated or, at minimum, to allow amendment of the complaint to cure any deficiencies.

# Background and Relevant Law

## RICO's Pattern Requirement and Continuity

The [Racketeer Influenced and Corrupt Organizations](#) Act (RICO) requires a plaintiff to demonstrate a "pattern of racketeering activity," which is not satisfied merely by alleging two or more predicate acts. Instead, the Supreme Court in *H.J. Inc. v. Northwestern Bell Telephone Co.* established that a pattern requires both a relationship among the predicate acts and continuity, which can be either closed-ended or open-ended, depending on the facts of the case (*H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229 (1989), as discussed in [Watchous Enterprises, LLC v. Pac. Nat'l Capital, LLC, Case No. 16-1432-JTM \(D. Kan. Jul 25, 2018\)](#); [List Interactive, Ltd. v. Knights of Columbus, 303 F.Supp.3d 1065 \(D. Colo. 2018\)](#); and summarized in *RICO: A Primer* (2022-01-31)).

Closed-ended continuity refers to a series of related predicate acts extending over a substantial period, while open-ended continuity refers to conduct that, by its nature, projects into the future with a threat of repetition ([List Interactive, Ltd. v. Knights of Columbus, 303 F.Supp.3d 1065 \(D. Colo. 2018\)](#); [Friedlob v. Trustees of Alpine Mut. Fund Trust, 905 F.Supp. 843 \(D. Colo. 1995\)](#); [Chapter 4. Elements of Cause of Action](#)). Open-ended continuity may be established by showing that the predicate acts are part of an ongoing entity's regular way of doing business or that there is a specific threat of repetition extending indefinitely into the future (*RICO: A Primer* (2022-01-31); [Chapter 4. Elements of Cause of Action](#)).

The Tenth Circuit and district courts within its jurisdiction have consistently applied this framework, requiring plaintiffs to allege not only multiple predicate acts but also facts demonstrating a threat of continuing racketeering activity, particularly when open-ended continuity is at issue ([Taylor v. Chesapeake Operating, Inc., Case No. CIV-18-565-D \(W.D. Okla. Nov 20, 2019\)](#); [Apache Tribe of Okla. v. Brown, 966 F.Supp.2d 1188 \(W.D. Okla. 2013\)](#); [Pti Grp., Inc. v. Gift Card Impressions, LLC, Case No. 14-2063-CM \(D. Kan. Sep 16, 2014\)](#); [Gotfredson v. Larsen Lp, 432 F.Supp.2d 1163 \(D. Colo. 2006\)](#)).

## Rule 59(e) Standard

A motion for reconsideration under Federal Rule of Civil Procedure 59(e) is appropriate where the court has overlooked material facts or controlling law, or where necessary to prevent manifest injustice (*Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000), as referenced in the user's question). This standard is met when the court's order fails to address essential elements of a claim, such as the ongoing nature of the enterprise or the risk of future predicate acts in a RICO case.

# Analysis

## The Court's Duty to Address Open-Ended Continuity

The authorities make clear that a court must conduct a fact-specific inquiry into whether the alleged predicate acts pose a threat of continued racketeering activity, especially when open-ended continuity is alleged. The Supreme Court's decision in *H.J. Inc. and its progeny* require courts to look beyond the mere number of predicate acts and to consider whether those acts are related and whether they demonstrate a threat of ongoing criminal conduct ([Watchous Enterprises, LLC v. Pac. Nat'l Capital, LLC, Case No. 16-1432-JTM \(D. Kan. Jul 25, 2018\)](#); [List Interactive, Ltd. v. Knights of Columbus, 303 F.Supp.3d 1065 \(D. Colo. 2018\)](#); RICO: A Primer (2022-01-31)).

Open-ended continuity is established where the predicate acts are part of the regular way an ongoing enterprise conducts its business or where the acts themselves pose a specific threat of repetition into the future ([Chapter 4. Elements of Cause of Action](#); [Gotfredson v. Larsen Lp, 432 F.Supp.2d 1163 \(D. Colo. 2006\)](#)). The Tenth Circuit has repeatedly emphasized that continuity is a central, temporal concept in the RICO context, and that the threat of continued racketeering activity is a function of the particular facts of each case ([List Interactive, Ltd. v. Knights of Columbus, 303 F.Supp.3d 1065 \(D. Colo. 2018\)](#); [Friedlob v. Trustees of Alpine Mut. Fund Trust, 905 F.Supp. 843 \(D. Colo. 1995\)](#)).

If the court's order failed to analyze whether the alleged enterprise's conduct projected into the future with a threat of repetition, or whether the predicate acts were part of the regular way the enterprise conducted its business, it overlooked a material element of the RICO claim. This is not a mere technicality; the pattern requirement is fundamental to RICO liability, and failure to address it constitutes an error of law and fact ([Watchous Enterprises, LLC v. Pac. Nat'l Capital, LLC, Case No. 16-1432-JTM \(D. Kan. Jul 25, 2018\)](#); [Apache Tribe of Okla. v. Brown, 966 F.Supp.2d 1188 \(W.D. Okla. 2013\)](#)).

## Application of Rule 59(e) in This Context

Rule 59(e) allows a court to alter or amend a judgment where it has overlooked material facts or controlling law, or to prevent manifest injustice (*Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000)). The failure to address open-ended continuity—where the complaint alleges facts supporting a threat of future racketeering activity or that the predicate acts are part of the enterprise's regular business—constitutes such an oversight.

The authorities confirm that courts must examine whether the facts alleged support a finding of open-ended continuity, and that this inquiry is inherently fact-specific (RICO: A Primer (2022-01-31); [Chapter 4. Elements of Cause of Action](#); [Gotfredson v. Larsen Lp, 432 F.Supp.2d 1163 \(D. Colo. 2006\)](#)). If the court's order summarily dismissed the RICO claim without engaging with

these allegations, a motion for reconsideration is not only appropriate but necessary to ensure the claim is properly adjudicated.

Moreover, the authorities recognize that, where a complaint's deficiencies are curable, leave to amend should be freely granted, especially in the context of a motion for reconsideration that highlights overlooked facts or law ([Pti Grp., Inc. v. Gift Card Impressions, LLC, Case No. 14-2063-CM \(D. Kan. Sep 16, 2014\)](#)). Thus, at a minimum, the court should permit amendment of the complaint to address any perceived deficiencies regarding open-ended continuity.

## **Synthesis of the Authorities**

The Supreme Court and Tenth Circuit authorities, as well as district court decisions within the circuit, are uniform in their insistence that the pattern requirement under RICO is not satisfied by a mechanical tally of predicate acts. Instead, courts must consider whether the acts are related and whether they pose a threat of continued criminal activity, with open-ended continuity being established by a threat of future repetition or by showing that the acts are part of the regular way the enterprise conducts its business ([Watchous Enterprises, LLC v. Pac. Nat'l Capital, LLC, Case No. 16-1432-JTM \(D. Kan. Jul 25, 2018\)](#); [List Interactive, Ltd. v. Knights of Columbus, 303 F.Supp.3d 1065 \(D. Colo. 2018\)](#); [Gotfredson v. Larsen Lp, 432 F.Supp.2d 1163 \(D. Colo. 2006\)](#); [Friedlob v. Trustees of Alpine Mut. Fund Trust, 905 F.Supp. 843 \(D. Colo. 1995\)](#); [Chapter 4. Elements of Cause of Action](#)).

Secondary materials reinforce this point, emphasizing that open-ended continuity is satisfied where the threat of continued criminal activity is present, and that courts must examine the facts of each case to determine whether this standard is met (RICO: A Primer (2022-01-31); [Racketeer influenced and corrupt organizations](#) (2011-03-22); [Racketeer influenced and corrupt organizations](#) (2023-07-01)).

If the court's order did not address these issues, it failed to apply controlling law and overlooked material facts, justifying reconsideration under Rule 59(e).

## **Exceptions and Caveats**

While the authorities are clear that open-ended continuity is a fact-specific inquiry, courts have also cautioned that not every scheme involving a small number of acts or a single victim will satisfy the continuity requirement ([Skurkey v. Daniel](#) (W.D. Okla. 2023)). However, this does not diminish the necessity for the court to engage with the allegations and to explain why the facts do or do not establish a threat of continued racketeering activity.

Additionally, courts have recognized that a single fraudulent effort, even if implemented by several acts, may not constitute a pattern if it does not pose a threat of ongoing criminal activity ([Professional Assets Manage. v. Penn Square Bank, 616 F.Supp. 1418 \(W.D. Okla. 1985\)](#)). Nevertheless, the key

point is that the court must make this determination based on the facts alleged, not by ignoring the open-ended continuity analysis altogether.

## Conclusion

In sum, the authorities provided uniformly support the proposition that a court's failure to address the ongoing nature of the enterprise, the risk of further predicate acts, or the open-ended continuity required under RICO constitutes an oversight of material facts and controlling law. Rule 59(e) is designed to remedy such errors, and reconsideration is appropriate to ensure that the RICO claim is properly evaluated on the merits or, at a minimum, to allow amendment of the complaint to cure any deficiencies. The pattern requirement under RICO is a nuanced, fact-specific inquiry, and courts must engage with the allegations regarding continuity—especially open-ended continuity—before dismissing a claim. Failure to do so warrants reconsideration to prevent manifest injustice and to ensure the proper application of RICO's substantive requirements.

## Legal Authorities

[Pti Grp., Inc. v. Gift Card Impressions, LLC, Case No. 14-2063-CM \(D. Kan. Sep 16, 2014\)](#)

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

### Extract

To adequately allege a pattern of racketeering activity, a RICO plaintiff must show (1) a relationship between the predicate acts and (2) the threat of continuing activity. *H.J. Inc. v. NW Bell Tel. Co.*, 492 U.S. 229, 239 (1989); *Bixler v. Foster*, 596 F.3d 751, 761 (10th Cir. 2010) ('To satisfy RICO's pattern requirement[, a plaintiff must] allege not only that the defendants had committed two or more predicate acts, but also that the predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity.') (emphasis in original) (citation omitted)). A plaintiff may demonstrate a threat of continuing activity by establishing either closed-ended or open-ended continuity...

### Summary

Requirements for establishing a pattern of racketeering activity under RICO, specifically the need to demonstrate a threat of continuing activity through either closed-ended or open-ended continuity. This directly relates to the proposition that the court's order did not fully address the ongoing nature of the enterprise or the risk of further predicate acts. The passage supports the argument that the court may have overlooked these aspects, which are crucial for a RICO claim.

[Friedlob v. Trustees of Alpine Mut. Fund Trust, 905 F.Supp. 843 \(D. Colo. 1995\)](#)

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

### **Extract**

To establish a pattern under RICO, plaintiff must also show that the alleged predicate acts amount to, or otherwise constitute a threat of, 'continuing racketeering activity.' Id. 'Continuity' is both a closed-ended and open-ended concept. Resolution Trust Corp. v. Stone, 998 F.2d 1534, 1543 (10th Cir. 1993). Plaintiff 'may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time.' Id. (citing H.J., Inc., 492 U.S. at 242, 109 S.Ct. at 2902); see Phelps, 886 F.2d at 1273. In contrast, 'open-ended continuity depends upon the facts of each case, and may be established by showing that the predicates themselves involve a distinct threat of long-term racketeering activity....'

### **Summary**

Requirement under RICO to establish a pattern of racketeering activity, which includes demonstrating continuity. It distinguishes between closed-ended and open-ended continuity, emphasizing that open-ended continuity involves a threat of long-term racketeering activity. This directly relates to the proposition that the court may have overlooked the ongoing nature of the enterprise and the risk of further predicate acts, which are essential to establishing open-ended continuity under RICO.

[Professional Assets Manage. v. Penn Square Bank, 616 F.Supp. 1418 \(W.D. Okla. 1985\)](#)

## **U.S. District Court — Western District of Oklahoma**

### **Extract**

The recent case of Northern Trust Bank/O'Hare v. Inryco, Inc., 615 F.Supp. 828 (N.D.Ill.1985), applied Sedima's interpretation of RICO to a kickback scheme including several separate entities, payments and bank accounts. The Inryco court reasoned that 'pattern' ... connotes a multiplicity of events. Surely the continuity inherent in the term presumes repeated criminal activity, not merely repeated acts to carry out the same criminal activity. It places a real strain on the language to speak of a single fraudulent effort, implemented by several fraudulent acts, as a 'pattern of racketeering activity.' (citation).

### **Summary**

Interpretation of "pattern" under RICO, emphasizing the need for continuity and repeated criminal activity rather than isolated acts. This supports the

proposition that the court may have overlooked the ongoing nature of the enterprise and the risk of further predicate acts, which are essential for establishing a RICO pattern. The passage suggests that a single fraudulent effort does not meet the RICO pattern requirement, implying that the court should reconsider its decision if it failed to address these aspects.

[Apache Tribe of Okla. v. Brown, 966 F.Supp.2d 1188 \(W.D. Okla. 2013\)](#)

## **U.S. District Court — Western District of Oklahoma**

### **Extract**

“[T]o satisfy RICO's pattern requirement, [a plaintiff must] allege not only that the defendants had committed two or more predicate acts, but also that the predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity.” *Bixler v. Foster*, 596 F.3d 751, 761 (10th Cir.2010) (quoting *Hall v. Witteman*, 584 F.3d 859, 867 (10th Cir. 2009)) (emphasis in original). “ ‘[T]he term pattern itself requires the showing of a relationship between the predicates and of the threat of continuing activity,’ so that it is ‘continuity plus relationship which combines to produce a pattern.’ ”

### **Summary**

The passage emphasizes the requirement under RICO to demonstrate not just multiple predicate acts, but also a threat of ongoing racketeering activity, which aligns with the concept of open-ended continuity. This supports the proposition that the court may have overlooked the ongoing nature of the enterprise and the risk of further predicate acts, which are crucial for establishing a RICO pattern. The passage underscores the necessity of showing both continuity and relationship between predicate acts, which is central to the argument for reconsideration.

[Skurkey v. Daniel](#)

## **U.S. District Court — Western District of Oklahoma**

### **Extract**

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. *H.J. Inc.*, 492 U.S. at 242. Courts have uniformly and consistently held that schemes involving a single, narrow purpose and one or few participants directed towards a single victim do not satisfy the RICO requirement of a closed or open pattern of continuity.



## Summary

The court in "Skurkey v. Daniel" addressed the issue of open-ended continuity under RICO. The court noted that the plaintiff failed to allege facts showing a clear threat of future criminal conduct, which is necessary to establish open-ended continuity. This aligns with the proposition that the court may have overlooked material allegations regarding open-ended continuity, which is a critical component of a RICO claim. The passage supports the argument that a motion for reconsideration could be appropriate if the court did not fully consider these aspects.

[Watchous Enterprises, LLC v. Pac. Nat'l Capital, LLC, Case No. 16-1432-JTM \(D. Kan. Jul 25, 2018\)](#)

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

#### Extract

A pattern of activity under the RICO statute means 'a series of related predicates that together demonstrate the existence or threat of continued criminal activity.' *RJR Nabsico v. European Community*, 136 S.Ct. 2090, 2096 (2016). This threat of continuity may be shown by demonstrating that 'the predicate acts or offenses are part of an ongoing entity's regular way of doing business.' *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 249 (1989).

## Summary

Definition of a "pattern of activity" under the RICO statute, emphasizing the need to demonstrate a "series of related predicates" that show a "threat of continued criminal activity." It further explains that this continuity can be shown if the predicate acts are part of an ongoing entity's regular business. This directly relates to the proposition that the court's order did not fully address the ongoing nature of the enterprise or the open-ended continuity required under RICO. The passage supports the argument that the court may have overlooked these aspects, which are crucial for establishing a RICO claim.

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

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

#### Extract

With respect to the 'continuity' requirement, the Supreme Court stated that the predicate acts must amount to, or pose a threat of, continuing racketeering activity. *Id.* According to the Supreme Court, continuity 'is both a closed- and open-ended concept, referring to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a



threat of repetition.' Id. A RICO plaintiff 'may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time.' Id. 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 the context of RICO, explaining that it can be either closed-ended or open-ended. The open-ended continuity is particularly relevant to the proposition, as it involves a threat of future repetition of predicate acts, which aligns with the argument that the court's order did not fully address the ongoing nature of the enterprise or the risk of further predicate acts. The passage supports the idea that if the court overlooked these aspects, a motion for reconsideration could be appropriate.

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

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

### **Extract**

In addition to closed-ended continuity, Plaintiffs contend that their complaint sufficiently alleges open-ended continuity. (Pls.' Resp. to Def. M. Larsen's Br. at 9.) Courts evaluate open-ended continuity on a case by case basis. Resolution Trust, 998 F.2d at 1543. 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.' Id. Open-ended continuity requires a clear threat of future criminal conduct. Erikson v. Farmers Group, Inc., 151 Fed.Appx. 672, 677 (10th Cir.2005) (citing Phelps v. Wichita Eagle-Beacon, 886 F.2d 1262, 1273 [10th Cir.1989]).

## **Summary**

Concept of open-ended continuity in RICO cases, emphasizing that it can be established by showing a threat of long-term racketeering activity or that the predicates are a regular way of conducting business. This directly relates to the proposition that the court may have overlooked material allegations regarding open-ended continuity, which is a crucial element in RICO claims. The passage supports the argument that if the court did not fully address this aspect, a motion for reconsideration could be appropriate.

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

## **U.S. District Court — Western District of Oklahoma**

### **Extract**

“[T]o satisfy RICO’s pattern requirement, [a plaintiff must] allege not only that the defendants had committed two or more predicate acts, but also that the predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity.” Bixler v. Foster, 596 F.3d 751, 761 (10th Cir. 2010) (quoting Hall v. Witteman, 584 F.3d 859, 867 (10th Cir. 2009)) (emphasis in original). “The term pattern itself requires the showing of a relationship between the predicates and of the threat of continuing activity; so that it is continuity plus relationship which combines to produce a pattern.”

### **Summary**

The passage highlights the requirement under RICO to demonstrate not just multiple predicate acts, but also a threat of continuing racketeering activity, which aligns with the concept of open-ended continuity. This supports the proposition that the court may have overlooked the ongoing nature of the enterprise and the risk of further predicate acts, which are crucial for establishing a RICO pattern. The passage underscores the necessity of showing continuity and relationship between predicate acts, which is central to the argument for reconsideration under Rule 59(e).

[List Interactive, Ltd. v. Knights of Columbus, 303 F.Supp.3d 1065 \(D. Colo. 2018\)](#)

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

### **Extract**

However, even if UKnight met its burden to show a relationship between the predicate acts, it has failed to sufficiently allege ‘continuity’ of the alleged racketeering activities. As the Supreme Court has explained, Continuity is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition. It is, in either case, centrally a temporal concept—and particularly so in the RICO context, where what must be continuous, RICO’s predicate acts or offenses, and the relationship these predicates must bear one to another, are distinct requirements. H.J., 492 U.S. at 241–42, 109 S.Ct. 2893. The Supreme Court has determined ‘that when Congress said predicates must demonstrate ‘continuity’ before they may form a RICO pattern, it expressed an intent that RICO reach activities that amount to or threaten long-term criminal activity.’ Bixler v. Foster, 596 F.3d 751, 761 (10th Cir. 2010) (citing H.J., 492 U.S. at 243 n.4, 109 S.Ct.

2893 ). As such, UKnight must show that the alleged Insurance Fraud Enterprise's activities 'amount to or threaten long-term criminal activity.'

## **Summary**

Requirement of "continuity" in RICO cases, which is a central issue in the proposition. It explains that continuity can be either closed-ended or open-ended, with the latter involving conduct that projects into the future with a threat of repetition. The passage cites Supreme Court and Tenth Circuit cases to emphasize that RICO is intended to address activities that threaten long-term criminal activity. This directly relates to the proposition's argument that the court overlooked the ongoing nature of the enterprise and the risk of further predicate acts, which are essential for establishing open-ended continuity under RICO.

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

**American Criminal Law Review - Georgetown University Law Center - Adam Governale, Keyes Gilmer, Elizabeth Hadley, Caroline Lagumina, Omoyele Okunola - 2022-07-01**

## **Extract**

To satisfy the RICO continuity element . . . a plaintiff must provide evidence of multiple predicate acts occurring over a substantial period of time (closed-end continuity) or evidence that the alleged predicate acts threaten to extend into the future (open-ended continuity)."; "holding pattern can be shown by either a closed period of repeated conduct or an open period threatening future repetition.

## **Summary**

Clear explanation of the requirements for establishing continuity under RICO, specifically highlighting the need for either closed-end continuity (multiple predicate acts over a substantial period) or open-ended continuity (predicate acts that threaten future repetition). This directly relates to the proposition that the court's order did not fully address the ongoing nature of the enterprise or the risk of further predicate acts, which are essential for establishing open-ended continuity under RICO. The passage supports the argument that the court may have overlooked these aspects, justifying a motion for reconsideration.

### [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**

The passage explains the concept of open-ended continuity under RICO, which is relevant to the proposition that the court overlooked material allegations regarding this aspect. The passage highlights that open-ended continuity involves conduct that poses a threat of extending into the future, which aligns with the argument that the court did not fully address the ongoing nature of the enterprise and the risk of further predicate acts. The passage also emphasizes the need for a case-by-case examination, suggesting that the court may have failed to consider specific facts that demonstrate a threat of continued racketeering activity.

[Racketeer influenced and corrupt organizations.](#)

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

## **Extract**

The 'continuity' component is met by either closed-ended continuity, defined as 'a series of related predicates extending over a substantial period of time,' or open-ended continuity, defined as conduct that poses a threat of extending into the future. The Court suggested a case-by-case examination of this issue, noting that the existence of a 'threat of continued racketeering activity' is a function of particular facts. The Court offered a non-exhaustive list of situations that may constitute a pattern, and stated 'development of these concepts must await future cases.'

## **Summary**

Concept of continuity under RICO, which is central to the proposition. It explains that continuity can be either closed-ended or open-ended, with open-ended continuity involving conduct that poses a threat of extending into the future. This directly relates to the proposition's assertion that the court did not fully address the ongoing nature of the enterprise or the risk of further predicate acts. The passage also notes that the determination of continuity is a case-by-case issue, which supports the argument for reconsideration if the court overlooked these aspects.

[Racketeer influenced and corrupt organizations.](#)

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

## **Extract**

The 'continuity' component is met by either closed-ended continuity, defined as 'a series of related predicates extending over a substantial period of time,' or open-ended continuity, defined as conduct that poses a threat of extending into the future. (55) 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. (56) ... United States v. Hively, 437 F.3d 752, 762 (8th Cir. 2006) (holding that despite cessation by former prosecutor of mail fraud scheme associated with grant program there was a sufficient threat of repetition of activity to show open ended continuity where defendant was still in office and still receiving grant money); ... N. Bridge Assoc., Inc. v. Boldt, 274 F.3d 38, 42 (1st Cir. 2001) (requiring plaintiffs to demonstrate that predicate acts are related and that they constitute or pose a threat of continued criminal activity).

## **Summary**

Detailed explanation of the "continuity" requirement under RICO, distinguishing between closed-ended and open-ended continuity. It emphasizes that open-ended continuity involves conduct that poses a threat of extending into the future, which is relevant to the proposition that the court overlooked material allegations regarding open-ended continuity. The passage also references specific cases where courts have found a threat of continued racketeering activity, supporting the argument that the court's order may have failed to fully address this aspect.

[Racketeer influenced and corrupt organizations.](#)

**American Criminal Law Review - Georgetown University Law Center - Mecone, James Morrison - 2006-03-22**

## **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. (53) 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. (54)

## Summary

Definition of open-ended continuity under RICO, which is relevant to the proposition that the court's order did not fully address this aspect. The passage emphasizes that open-ended continuity involves conduct that poses a threat of extending into the future, which aligns with the argument that the court overlooked material allegations regarding the ongoing nature of the enterprise and the risk of further predicate acts. The passage also notes that the existence of a threat of continued racketeering activity is a function of particular facts, supporting the need for a case-by-case examination, which the court may have failed to conduct.

[Racketeer influenced and corrupt organizations](#)

**American Criminal Law Review - Georgetown University Law Center -  
Brynn Peluso, Mariah Breit, Natalie Cappuzzo, Katelyn Gloe,  
Alexandra Peterson - 2023-07-01**

## Extract

The Supreme Court introduced the closed-ended and open-ended standards in *H.J. Inc. v. Northwestern Bell Telephone Co.* to underscore the Court's view that 'there is something to a RICO pattern beyond simply the number of predicate acts involved.' The Court announced a two-prong 'continuity plus relationship' test to determine what constitutes a pattern under the statute. ... Second, the 'continuity' prong is satisfied either by a series of related predicate acts extending over a significant period of time (closed-ended conspiracy), or a short-lived series of acts that also establish a threat of long-term activity (open-ended conspiracy). The 'threat' of continued racketeering activity may be shown by evidence that the predicate acts are part of the RICO defendant's 'regular way of doing business' or that they are 'a regular means of conducting or participating in an ongoing RICO enterprise.' The Court called for a case-by-case examination of this issue.

## Summary

The Supreme Court has established a "continuity plus relationship" test for determining a pattern of racketeering under RICO. The "continuity" prong can be satisfied by demonstrating either a closed-ended or open-ended conspiracy. The open-ended conspiracy is particularly relevant here, as it involves a short-lived series of acts that pose a threat of long-term activity, which the court may have overlooked. This supports the argument that the court's order did not fully address the ongoing nature of the enterprise or the risk of further predicate acts, justifying a motion for reconsideration.

[Racketeer influenced and corrupt organizations.](#)

## **Extract**

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

## **Summary**

The passage explains the concept of "continuity" under RICO, which can be either closed-ended or open-ended. Open-ended continuity is particularly relevant to the proposition because it involves conduct that poses a threat of continuing into the future, which the court may have overlooked. The passage also emphasizes the need for a case-by-case examination, suggesting that the court should have considered the specific facts of the case to determine the threat of continued racketeering activity.

[Racketeer influenced and corrupt organizations.](#)

## **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. The Court offered a non-exhaustive list of situations that may constitute a pattern, and stated 'development of these concepts must await future cases.'

## **Summary**

Concept of "continuity" under RICO, which 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. The passage emphasizes the need for a case-by-case examination to determine the threat of continued racketeering activity, which aligns with the proposition's argument that the court overlooked material allegations



regarding open-ended continuity. This supports the need for reconsideration under Rule 59(e) to address these overlooked aspects.

#### [Chapter 4. Elements of Cause of Action](#)

### **Civil RICO: A Definitive Guide. Fifth Edition - American Bar Association - Gregory P. Joseph**

#### **Extract**

Under the “less inflexible approach” adopted in *H.J. Inc.*, continuity is “both a closed- and open-ended concept.” *Id.* at 241. Closed-ended continuity refers “to a closed period of repeated conduct,” while open-ended continuity denotes “past conduct that by its nature projects into the future with a threat of repetition.” ... Open-ended continuity, in contrast, requires proof of “a threat of continued racketeering activity.” *Id.* at 242. Under *H.J. Inc.*, open-ended continuity may be established in various ways. The Court furnished some examples. First, a small number of related predicates occurring close together in time will establish open-ended continuity if “the racketeering acts themselves include a specific threat of repetition extending indefinitely into the future, and thus supply the requisite threat of continuity.” Second, the threat of continuity may be established with a “showing that the predicate acts or offenses are part of an ongoing entity’s regular way of doing business.” Third, continuity is proved “if the predicates can be attributed to a defendant operating as part of a long-term association that exists for criminal purposes.”

#### **Summary**

The passage from the guide explains the concept of continuity under RICO, distinguishing between closed-ended and open-ended continuity. It provides examples of how open-ended continuity can be established, such as when predicate acts are part of an ongoing entity's regular way of doing business or when there is a specific threat of repetition. This directly supports the proposition that the court may have overlooked material allegations regarding open-ended continuity, which is a critical element in RICO cases.

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

#### **Extract**

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

of related predicate acts extending over a substantial period of time.' \* 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 under RICO can be satisfied by demonstrating either closed-ended or open-ended continuity. Open-ended continuity involves a threat of continuing criminal activity extending indefinitely into the future, which is relevant to the proposition that the court overlooked material allegations regarding open-ended continuity. This supports the argument for reconsideration under Rule 59(e) due to the court's oversight of these aspects.

## [RICO: A Primer](#)

## **Extract**

The continuity requirement is likewise satisfied where the predicates are a regular way of conducting the defendant's ongoing legitimate business (in the sense that it is not a business that exists for criminal purposes), or of conducting or participating in an ongoing and legitimate RICO 'enterprise.' A plaintiff may demonstrate a pattern by establishment that the predicate acts pose a threat of continued criminal activity, which is generally demonstrated by showing either: \* Closed-ended continuity. Proving 'a series of related predicate acts extending over a substantial period of time.' \* 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 under RICO can be satisfied by demonstrating either closed-ended or open-ended continuity. Open-ended continuity involves showing a threat of continuing criminal activity extending indefinitely into the future, which is relevant to the proposition that the court overlooked material allegations regarding open-ended continuity.

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