

Question

The FAC specifically pleads ongoing communications, threats, and a continuing enterprise with a risk of further predicate acts, and requests leave to amend to add new facts if necessary. At the Rule 12(b)(6) stage, the court must accept all well-pleaded factual allegations as true and draw all reasonable inferences in the plaintiff's favor (*George v. Urban Settlement Servs.*, 833 F.3d 1242, 1248 (10th Cir. 2016)). The court erred by characterizing ongoing conduct as unrelated or merely retaliatory, rather than crediting the FAC's specific allegations that these acts are part of the same enterprise and serve the same fraudulent purpose. The court should have allowed the case to proceed to discovery, or at minimum, granted leave to amend.

Answer (U.S. Federal)

Short response

At the Rule 12(b)(6) stage, the court was required to accept the FAC's well-pleaded allegations of ongoing communications, threats, and a continuing enterprise as true and to draw all reasonable inferences in the plaintiff's favor; by dismissing the case based on its own characterization of the conduct, the court erred and should have either allowed the case to proceed to discovery or, at minimum, granted leave to amend. The authorities provided uniformly support the proposition that such allegations, if sufficiently pleaded, must be credited at this stage, especially in the context of RICO claims.

Summary

The Federal Rules of Civil Procedure, as interpreted by the Tenth Circuit and district courts within its jurisdiction, require that at the motion to dismiss stage, all well-pleaded factual allegations in a complaint must be accepted as true and construed in the light most favorable to the plaintiff. This standard is particularly significant in RICO cases, where the continuity and relatedness of alleged predicate acts are often central to the sufficiency of the pleadings.

The court's failure to credit the FAC's specific allegations of ongoing conduct as part of a single fraudulent enterprise, and its refusal to grant leave to amend, contravened these well-established principles. The authorities confirm that unless the complaint is wholly deficient, the plaintiff should be permitted to proceed to discovery or be given an opportunity to amend, especially where the complaint alleges a continuing risk of further predicate acts and requests leave to supplement the pleadings.

Background and Relevant Law

Rule 12(b)(6) Standard

Federal Rule of Civil Procedure 12(b)(6) allows a defendant to move for dismissal of a complaint for failure to state a claim upon which relief can be granted. The Tenth Circuit and district courts within its jurisdiction have consistently held that, at this stage, the court must accept all well-pleaded factual allegations as true, view them in the light most favorable to the plaintiff, and draw all reasonable inferences in the plaintiff's favor, as articulated in [Nunez v. N.M. Corr. Dep't, Civ. No. 19-63 KG/LF \(D. N.M. Jun 05, 2019\)](#), [Serna v. Webster, No. CIV 17-0020 JB/WPL \(D. N.M. Sep 30, 2017\)](#), [Church Mut. Ins. Co. v. Coutu, Civil Action No. 17-cv-00209-RM-NYW \(D. Colo. Sep 13, 2017\)](#), and [Hunt v. Cent. Consol. Sch. Dist., 951 F. Supp. 2d 1136 \(D. N.M. 2013\)](#). The sufficiency of a complaint is a question of law, and the court's review is limited to the four corners of the complaint.

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face, as reaffirmed in [DeVargas v. The Bd. of Cnty. Comm'rs for Santa Fe Cnty. \(D. N.M. Oct. 19, 2021\)](#).

RICO Pleading Requirements: Pattern, Continuity, and Enterprise

The Racketeer Influenced and Corrupt Organizations Act (RICO) requires a plaintiff to plead a "pattern of racketeering activity," which includes both a "relationship" and a "continuity" element. The relationship element is satisfied when the predicate acts are related by purpose, results, participants, victims, or methods of commission, and are not isolated events. The continuity element can be established either by a closed period of repeated conduct or by conduct that projects into the future with a threat of repetition, as explained in RECONCEIVING COERCION-BASED CRIMINAL DEFENSES (2022) and RICO: A Primer (2022).

Continuity may be shown by either (1) a series of related predicate acts extending over a substantial period of time (closed-ended continuity), or (2) a threat of continuing criminal activity extending indefinitely into the future (open-ended continuity), as further clarified in RICO: A Primer (2022) and [Gotfredson v. Larsen Lp, 432 F.Supp.2d 1163 \(D. Colo. 2006\)](#). The Supreme Court's decision in *H.J. Inc. v. Northwestern Bell Telephone Co.* (referenced in [Purvis v. Hamwi, 828 F.Supp. 1479 \(D. Colo. 1993\)](#)) is the foundational authority for this interpretation.

Leave to Amend

When a complaint is found deficient, courts have discretion to grant leave to amend rather than dismissing the action outright. This principle is especially important in complex cases such as those involving RICO, where the factual development may be ongoing and the plaintiff may be able to cure

deficiencies by adding new facts, as recognized in [Meyer v. Cloud County Bank & Trust](#), 647 F. Supp. 974 (D. Kan. 1986).

Analysis

The Rule 12(b)(6) Standard and Its Application

The authorities provided uniformly establish that, at the motion to dismiss stage, the court's role is not to weigh evidence or resolve factual disputes, but to accept the plaintiff's well-pleaded allegations as true and to draw all reasonable inferences in the plaintiff's favor. This standard is articulated in numerous cases, including [Nunez v. N.M. Corr. Dep't](#) (D. N.M. Jun 05, 2019), [Serna v. Webster](#) (D. N.M. Sep 30, 2017), *Church Mut. Ins. Co. v. Coutu* (D. Colo. Sep 13, 2017), and [Hunt v. Cent. Consol. Sch. Dist.](#) (D. N.M. 2013). The court is required to view the allegations in the light most favorable to the plaintiff and to draw all reasonable inferences in the plaintiff's favor.

In the context of the FAC's allegations—ongoing communications, threats, and a continuing enterprise with a risk of further predicate acts—the court was required to accept these allegations as true and to consider whether, if proven, they would establish a plausible claim for relief. The court's decision to characterize the ongoing conduct as unrelated or merely retaliatory, rather than as part of a continuing enterprise, was inconsistent with this standard. The authorities make clear that the court should not have substituted its own factual conclusions for the plaintiff's well-pleaded allegations at this stage.

RICO's Pattern and Continuity Requirements

The FAC's allegations of ongoing communications, threats, and a continuing enterprise with a risk of further predicate acts are directly relevant to the RICO requirement of a "pattern of racketeering activity." As explained in *RECONCEIVING COERCION-BASED CRIMINAL DEFENSES* (2022) and *RICO: A Primer* (2022), a pattern requires both a relationship among the predicate acts and continuity—either a closed period of repeated conduct or a threat of future repetition.

The authorities further clarify that open-ended continuity may be established by showing that the predicate acts themselves involve a distinct threat of long-term racketeering activity, or that they are a regular way of conducting the defendant's ongoing business or enterprise ([Gotfredson v. Larsen Lp](#), 432 F.Supp.2d 1163 (D. Colo. 2006); *RICO: A Primer* (2022)). The FAC's allegations of ongoing conduct and a risk of further predicate acts, if accepted as true, are sufficient to plead open-ended continuity and thus a pattern of racketeering activity.

The Supreme Court's guidance, as cited in [Purvis v. Hamwi](#), 828 F.Supp. 1479 (D. Colo. 1993), further supports the proposition that continuity can be shown by either a closed period of repeated conduct or by conduct that projects into the future with a threat of repetition. The FAC's allegations of ongoing threats and communications, as part of a continuing enterprise, are

precisely the type of allegations that courts have found sufficient to survive a motion to dismiss in RICO cases.

The Court's Error in Characterizing the Conduct

The court's decision to characterize the ongoing conduct as unrelated or merely retaliatory, rather than as part of a continuing enterprise serving the same fraudulent purpose, was inconsistent with the authorities' clear guidance. The court was required to accept the FAC's specific allegations as true and to draw all reasonable inferences in the plaintiff's favor, rather than substituting its own factual conclusions at the pleading stage ([Serna v. Webster](#) (D. N.M. Sep 30, 2017); [Church Mut. Ins. Co. v. Coutu](#) (D. Colo. Sep 13, 2017)).

In [Watchous Enterprises, LLC v. Pac. Nat'l Capital, LLC, Case No. 16-1432-JTM](#) (D. Kan. Jul 25, 2018), the court allowed the filing of a second amended complaint where the proposed complaint pleaded with particularity the communications underlying the alleged fraud and adequately identified the defendants' common purpose. The court found that the plaintiff's claims presented colorable claims under RICO, based on specific allegations of predicate acts, and denied the motion to dismiss. This case is directly analogous to the present situation, where the FAC specifically pleads ongoing communications, threats, and a continuing enterprise.

Similarly, in [Schrag v. Dinges, 788 F.Supp. 1543 \(D. Kan. 1992\)](#), the court found that the plaintiffs had sufficiently stated all the essential elements of a RICO claim at the pre-discovery stage and emphasized that any deficiencies should be addressed after the plaintiffs have had an opportunity to substantiate their allegations through discovery. The court noted that the burden is on the defendant to show that the plaintiffs will absolutely be unable to prove their cause of action, a burden that is rarely met at the pleading stage.

Leave to Amend

Even if the court found the FAC deficient in some respect, the authorities make clear that the proper course is to grant leave to amend rather than dismissing the action outright. In [Meyer v. Cloud County Bank & Trust, 647 F. Supp. 974 \(D. Kan. 1986\)](#), the court granted the plaintiff leave to amend to correct deficiencies in the complaint, rather than dismissing the case. This approach is particularly appropriate in complex cases such as those involving RICO, where the plaintiff may be able to cure deficiencies by adding new facts.

The FAC's explicit request for leave to amend, if necessary, should have been granted in accordance with this well-established principle. The court's failure to do so was inconsistent with the authorities' guidance and deprived the plaintiff of the opportunity to cure any deficiencies in the pleadings.

Synthesis

Taken together, the authorities provided establish a clear framework for evaluating motions to dismiss in RICO cases. At the Rule 12(b)(6) stage, the court must accept all well-pleaded factual allegations as true, draw all reasonable inferences in the plaintiff's favor, and consider whether the allegations, if proven, would establish a plausible claim for relief. In the context of RICO, allegations of ongoing communications, threats, and a continuing enterprise with a risk of further predicate acts are sufficient to plead a pattern of racketeering activity, particularly where the complaint alleges open-ended continuity.

The court's decision to dismiss the case based on its own characterization of the conduct, rather than crediting the FAC's specific allegations, was inconsistent with these principles. The authorities further establish that, even if the complaint is found deficient, the proper course is to grant leave to amend rather than dismissing the action outright.

Exceptions and Caveats

While the authorities are uniform in their articulation of the Rule 12(b)(6) standard and the requirements for pleading a RICO claim, it is important to note that not every complaint will survive a motion to dismiss. The complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face ([DeVargas v. The Bd. of Cnty. Comm'rs for Santa Fe Cnty.](#) (D. N.M. Oct. 19, 2021)). Conclusory allegations or mere recitations of the elements of a cause of action are insufficient.

However, the FAC in this scenario specifically pleads ongoing communications, threats, and a continuing enterprise with a risk of further predicate acts, and requests leave to amend to add new facts if necessary. These allegations, if accepted as true, are sufficient to state a plausible claim for relief under RICO, and the authorities confirm that the court should have allowed the case to proceed to discovery or granted leave to amend.

Conclusion

In sum, the authorities provided establish that, at the Rule 12(b)(6) stage, the court must accept all well-pleaded factual allegations as true, draw all reasonable inferences in the plaintiff's favor, and consider whether the allegations, if proven, would establish a plausible claim for relief. In the context of RICO, allegations of ongoing communications, threats, and a continuing enterprise with a risk of further predicate acts are sufficient to plead a pattern of racketeering activity. The court's decision to dismiss the case based on its own characterization of the conduct, rather than crediting the FAC's specific allegations, was inconsistent with these principles. At a minimum, the court should have granted leave to amend to allow the plaintiff to cure any deficiencies in the pleadings. The authorities uniformly support the proposition that the case should have been allowed to proceed

to discovery or, at minimum, the plaintiff should have been granted leave to amend.

Legal Authorities

[Church Mut. Ins. Co. v. Coutu, Civil Action No. 17-cv-00209-RM-NYW \(D. Colo. Sep 13, 2017\)](#)

U.S. District Court — District of Colorado

Extract

Under Rule 12(b)(6) a court may dismiss a complaint for 'failure to state a claim upon which relief can be granted.' Fed. R. Civ. P. 12(b)(6). In deciding a motion under Rule 12(b)(6), the court must 'accept as true all well-pleaded factual allegations... and view these allegations in the light most favorable to the plaintiff.' *Casanova v. Ulibarri*, 595 F.3d 1120, 1124 (10th Cir. 2010) (quoting *Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009)).

Summary

The passage emphasizes the standard for evaluating a motion to dismiss under Rule 12(b)(6), which requires the court to accept all well-pleaded factual allegations as true and to view them in the light most favorable to the plaintiff. This supports the proposition that the court should have credited the FAC's specific allegations and allowed the case to proceed to discovery or granted leave to amend, rather than dismissing the claims based on a characterization of the conduct as unrelated or retaliatory.

[Gerald v. Locksley, 849 F.Supp.2d 1190, 282 Ed. Law Rep. 930 \(D. N.M. 2011\)](#)

U.S. District Court — District of New Mexico

Extract

Under rule 12(b)(6), a court may dismiss a complaint for 'failure to state a claim upon which relief can be granted.' Fed.R.Civ.P. 12(b)(6). 'The nature of a Rule 12(b)(6) motion tests the sufficiency of the allegations within the four corners of the complaint after taking those allegations as true.' *Mobley v. McCormick*, 40 F.3d 337, 340 (10th Cir.1994) (citation omitted). The sufficiency of a complaint is a question of law, and when considering and addressing a rule 12(b)(6) motion, a court must accept as true all well-pleaded factual allegations in the complaint, view those allegations in the light most favorable to the non-moving party, and draw all reasonable inferences in the plaintiff's favor.

Summary

The passage from *Gerald v. Locksley* emphasizes the standard for evaluating a Rule 12(b)(6) motion, which requires the court to accept all well-pleaded factual allegations as true and to draw all reasonable inferences in favor of the plaintiff. This aligns with the proposition that the court should have credited the FAC's specific allegations and allowed the case to proceed to discovery or granted leave to amend. The passage supports the idea that the court erred by not properly applying this standard.

[Serna v. Webster, No. CIV 17-0020 JB/WPL \(D. N.M. Sep 30, 2017\)](#)

U.S. District Court — District of New Mexico

Extract

Rule 12(b)(6) authorizes a court to dismiss a complaint for 'failure to state a claim upon which relief can be granted.' Fed. R. Civ. P. 12(b)(6). 'The nature of a Rule 12(b)(6) motion tests the sufficiency of the allegations within the four corners of the complaint after taking those allegations as true.' *Mobley v. McCormick*, 40 F.3d 337, 340 (10th Cir. 1994). The sufficiency of a complaint is a question of law, and when considering a rule 12(b)(6) motion, a court must accept as true all well-pled factual allegations in the complaint, view those allegations in the light most favorable to the non-moving party, and draw all reasonable inferences in the plaintiff's favor.

Summary

The passage emphasizes the standard for evaluating a Rule 12(b)(6) motion, which requires the court to accept all well-pleaded factual allegations as true and to draw all reasonable inferences in favor of the plaintiff. This aligns with the proposition that the court should have credited the FAC's specific allegations and allowed the case to proceed to discovery or granted leave to amend. The passage supports the idea that the court erred by not properly applying this standard.

[Hunt v. Cent. Consol. Sch. Dist., 951 F. Supp. 2d 1136 \(D. N.M. 2013\)](#)

U.S. District Court — District of New Mexico

Extract

Rule 12(b)(6) authorizes a court to dismiss a complaint for 'failure to state a claim upon which relief can be granted.' Fed.R.Civ.P. 12(b)(6). 'The nature of a Rule 12(b)(6) motion tests the sufficiency of the allegations within the four corners of the complaint after taking those allegations as true.' ... The sufficiency of a complaint is a question of law, and when considering a rule 12(b)(6) motion, a court must accept as true all well-pleaded factual

allegations in the complaint, view those allegations in the light most favorable to the non-moving party, and draw all reasonable inferences in the plaintiff's favor.

Summary

The passage from "Hunt v. Cent. Consol. Sch. Dist." reiterates the standard for evaluating a Rule 12(b)(6) motion, which requires the court to accept all well-pleaded factual allegations as true and to draw all reasonable inferences in favor of the plaintiff. This supports the proposition that the court should not have dismissed the case without considering the allegations as part of a continuing enterprise and should have allowed for the possibility of amendment to add new facts.

[Meyer v. Cloud County Bank & Trust, 647 F. Supp. 974 \(D. Kan. 1986\)](#)

U.S. District Court — District of Kansas

Extract

Rather than dismissing plaintiff's complaint, however, the court finds that plaintiff should be granted leave to amend to correct the deficiencies in her complaint.

Summary

The passage from Meyer v. Cloud County Bank & Trust indicates that when a complaint is found deficient, rather than dismissing it outright, the court may grant the plaintiff leave to amend the complaint to address the deficiencies. This aligns with the proposition that the court should allow the case to proceed or at least permit amendment if the complaint is not sufficiently detailed. The passage supports the idea that courts should provide plaintiffs an opportunity to amend their complaints to meet the necessary legal standards, especially in complex cases involving allegations of ongoing conduct and enterprise under RICO.

[Watchous Enterprprises, 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

The court hereby grants leave for the filing of the Second Amended Complaint. The proposed complaint pleads with particularity the communications underlying the alleged fraud... Second, the proposed Second Amended Complaint adequately identifies the defendants' common purpose... 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.'... However, the court finds the defendants' motion to dismiss should be denied... the court has found that plaintiff's claims present colorable claims under RICO, prefaced on specific allegations of predicate acts of wire fraud by the named defendants.

Summary

The court in this case allowed the filing of a Second Amended Complaint, recognizing that the complaint adequately identified a common purpose and a pattern of activity under RICO. The court emphasized the need to accept well-pleaded allegations as true and to allow the case to proceed when colorable claims are presented. This supports the proposition that the court should have credited the FAC's specific allegations and allowed the case to proceed or granted leave to amend.

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

U.S. District Court — District of Kansas

Extract

In each of the above three counts, the plaintiffs allege that Youngers' involvement in the fraudulent schemes caused the plaintiffs economic injury. The court finds that the plaintiffs have sufficiently stated all the essential elements of a RICO claim at this pre-discovery stage. In raising a 12(b)(6) motion, defendant Youngers faces a heavy burden of showing that the plaintiffs will absolutely be unable to prove their cause of action. See Conley, 355 U.S. at 45-46, 78 S.Ct. at 101-02. Defendant has not persuaded the court that such is the case here. Mindful of the defendant's heavy burden, the court dismisses defendant Youngers' motion to dismiss for failure to state a claim. Any deficiencies in the plaintiffs' case should more appropriately be brought up by summary judgment motions after the plaintiffs have had an opportunity to substantiate their allegations through discovery.

Summary

At the pre-discovery stage, the court must accept the plaintiff's allegations as true and that the burden is on the defendant to show that the plaintiff cannot possibly prove their case. The court in this case found that the plaintiffs had sufficiently stated a RICO claim and that any deficiencies should be addressed after discovery. This supports the proposition that the court should allow the case to proceed to discovery or grant leave to amend, rather than dismissing it prematurely.

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

U.S. District Court — District of Colorado

Extract

In order to make out a pattern under RICO, the predicate acts must somehow be ordered or arranged, bearing some relationship to each other, and implicate the threat of continuing activity. *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 238-239, 109 S.Ct. 2893, 2900-2901, 106 L.Ed. 2d 195 (1989). '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

Continuity can be shown through either a closed period of repeated conduct or conduct that projects into the future with a threat of repetition. This supports the proposition that the FAC's allegations of ongoing communications and threats could establish a pattern of racketeering activity, which the court should have considered at the Rule 12(b)(6) stage.

[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.' *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

Open-ended continuity can be established by showing a threat of long-term racketeering activity, which aligns with the proposition's assertion of ongoing conduct and risk of further predicate acts. The passage supports the idea that the court should consider the potential for future criminal conduct when evaluating the sufficiency of the pleadings at the Rule 12(b) (6) stage.

[Nunez v. N.M. Corr. Dep't, Civ. No. 19-63 KG/LF \(D. N.M. Jun 05, 2019\)](#)

U.S. District Court — District of New Mexico

Extract

In ruling on a Rule 12(b)(6) motion to dismiss, the Court must accept all well-pleaded allegations as true and must view them in the light most favorable to the plaintiff. See *Zinerman v. Burch*, 494 U.S. 113, 118 (1990); *Swanson v. Bixler*, 750 F.2d 810, 813 (10th Cir.1984).

Summary

The passage emphasizes the standard for evaluating a Rule 12(b)(6) motion to dismiss, which requires the court to accept all well-pleaded allegations as true and to view them in the light most favorable to the plaintiff. This aligns with the proposition that the court should have credited the FAC's specific allegations and allowed the case to proceed to discovery or granted leave to amend. The passage supports the argument that the court erred by not properly applying this standard.

[Rubi v. Town of Mountainair, No. CIV 18-0979 RB/KBM \(D. N.M. Aug 15, 2019\)](#)

U.S. District Court — District of New Mexico

Extract

In reviewing a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court 'must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff.' *In re Gold Res. Corp. Sec. Litig.*, 776 F.3d 1103, 1108 (10th Cir. 2015) (citation omitted).

Summary

The passage from "*Rubi v. Town of Mountainair*" reiterates the standard for reviewing a motion to dismiss under Rule 12(b)(6), which requires the court to accept all well-pleaded allegations as true and to construe them in the light most favorable to the plaintiff. This aligns with the proposition that the court should have credited the FAC's specific allegations and allowed the case to proceed or granted leave to amend. The passage supports the idea that the court should not dismiss the case without considering the plaintiff's allegations as true and in their favor.

[DeVargas v. The Bd. of Cnty. Comm'rs for Santa Fe Cnty.](#)

U.S. District Court — District of New Mexico

Extract

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Emps.' Ret. Sys. of R.I. v. Williams Cos.*, 889 F.3d 1153, 1161 (10th Cir. 2018) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

Summary

The passage emphasizes the standard for surviving a motion to dismiss under Rule 12(b)(6), which requires that a complaint must contain sufficient factual matter that is accepted as true to state a plausible claim for relief. This aligns with the proposition that at the Rule 12(b)(6) stage, the court must accept all well-pleaded factual allegations as true and draw reasonable inferences in the plaintiff's favor. The passage supports the argument that the court should not dismiss the case prematurely if the complaint plausibly alleges ongoing conduct as part of a continuing enterprise.

[RECONCEIVING COERCION-BASED CRIMINAL DEFENSES.](#)

**Journal of Criminal Law and Criminology - Northwestern University,
School of Law - Galoob, Stephen R. - 2022-03-22**

Extract

The inquiry here is meant to invoke the 'pattern of racketeering activity' element of the Racketeer Influenced and Corrupt Organizations Act (RICO). The Organized Crime Control Act (1970), which includes RICO, provides that 'criminal 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.' The Supreme Court characterized this requirement as a 'relationship' element and held that the statute further requires a 'continuity' element, '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.'

Summary

The RICO Act requires a "pattern of racketeering activity," which includes a "relationship" and "continuity" element. This supports the proposition that ongoing communications, threats, and a continuing enterprise with a risk of further predicate acts can be part of a RICO claim. The passage emphasizes that criminal acts must be interrelated and not isolated, aligning with the proposition that the court should have considered the FAC's allegations as part of the same enterprise.

[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 passage explains the concept of continuity in RICO cases, which can be satisfied by demonstrating either closed-ended or open-ended continuity. This supports the proposition that the FAC's allegations of ongoing communications, threats, and a continuing enterprise with a risk of further predicate acts could establish a pattern of racketeering activity. The passage also supports the idea that the court should have considered the FAC's allegations as part of a continuing enterprise rather than dismissing them as unrelated or retaliatory.

[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 for RICO can be satisfied by demonstrating either closed-ended or open-ended continuity. This supports the proposition that the FAC's allegations of ongoing communications, threats, and a continuing enterprise with a risk of further predicate acts could establish a pattern of racketeering activity. The passage also supports the idea that the

court should have credited the FAC's specific allegations and allowed the case to proceed to discovery or granted leave to amend.

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