

## Question

What are the legal standards for RICO civil claims in the 10th Circuit, including the requirements for open-ended versus closed-ended continuity?

## Answer (Tenth Circuit)

### Short response

To establish a civil RICO claim in the 10th Circuit, a plaintiff must prove: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity, with the pattern element requiring both relationship and continuity among predicate acts. Continuity can be either "closed-ended" (involving a closed period of repeated conduct over a substantial timeframe) or "open-ended" (involving past conduct that threatens future repetition).

### Summary

Civil RICO claims in the 10th Circuit require proving four essential elements: conduct, enterprise, pattern of racketeering activity, and resultant injury. The pattern element is particularly critical and demands showing both "relationship" among the predicate acts (similar purposes, results, participants, victims, or methods of commission) and "continuity" (either closed-ended or open-ended). While the relationship requirement is relatively straightforward, the continuity requirement presents greater challenges for plaintiffs.

The 10th Circuit recognizes two forms of continuity. Closed-ended continuity requires proving a series of related predicates extending over a substantial period of time, with acts spanning only weeks or months being insufficient. Open-ended continuity requires showing that past conduct projects into the future with a threat of repetition, which can be demonstrated by showing that: the predicates themselves involve a threat of long-term racketeering activity; they form the operations of an association existing for criminal purposes; or they constitute the regular way of conducting either a legitimate or illegitimate business. The court applies a case-specific analysis to determine whether either form of continuity exists.

## Background on Civil RICO Claims

The [Racketeer Influenced and Corrupt Organizations](#) Act (RICO) provides a civil cause of action for treble damages to anyone injured "by reason of" certain racketeering activity under 18 U.S.C. §§ 1964(c) and 1962. Originally designed to combat organized crime's infiltration of legitimate businesses, RICO has evolved into a powerful tool in civil litigation, allowing plaintiffs to recover enhanced damages when they can demonstrate a pattern of criminal conduct.

## Core Elements of a Civil RICO Claim

In the 10th Circuit, establishing a valid RICO claim requires a plaintiff to plausibly allege four essential elements. As articulated in [Johnson v. Heath, 56 F.4th 851, 858 \(10th Cir. 2022\)](#), a plaintiff must show that a defendant "(1) conducted the affairs (2) of an enterprise (3) through a pattern (4) of racketeering activity."

These four elements derive from the statutory language of 18 U.S.C. § 1962(c), as confirmed by the 10th Circuit in [Tal v. Hogan, 453 F.3d 1244, 1261-62 \(10th Cir. 2006\)](#), which states: "The elements of a civil RICO claim are (1) investment in, control of, or conduct of (2) an enterprise (3) through a pattern (4) of racketeering activity."

For the conduct element, the 10th Circuit applies the Supreme Court's "operation or management" test, as noted in [Bancoklahoma Mortgage Corp. v. Capital Title Co., 194 F.3d 1089 \(10th Cir. 1999\)](#): "For liability to be imposed under that test, the defendants must have participated in the operation or management of the RICO enterprise."

The enterprise requirement involves showing a structured group of individuals associated for a common purpose, while racketeering activity refers to specific predicate acts listed in 18 U.S.C. § 1961(1), including mail fraud, wire fraud, and various other federal and state crimes.

## The Pattern Requirement: Relationship and Continuity

The focus of this analysis is on the pattern requirement, particularly the continuity aspect that distinguishes ordinary criminal conduct from the type of ongoing criminal activity that RICO was designed to address.

### Defining a "Pattern" of Racketeering Activity

The statutory definition in 18 U.S.C. § 1961(5) states that a "'pattern of racketeering activity' requires at least two acts of racketeering activity." However, as noted in [Bixler v. Foster, 596 F.3d 751, 761 \(10th Cir. 2010\)](#), proving two predicate acts is necessary but not sufficient to establish a pattern. The 10th Circuit has consistently held that plaintiffs must also demonstrate that "the predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity."

This requirement stems from RICO's legislative history, which indicates that the law was aimed at "long-term criminal activity" rather than "sporadic activity" or the "isolated offender." As the 10th Circuit explained in [Condict v. Condict, 815 F.2d 579 \(10th Cir. 1987\)](#), "As many commentators have pointed out, the definition of a 'pattern of racketeering activity' differs from the other provisions in Sec. 1961 in that it states that a pattern 'requires at least two acts of racketeering activity,' Sec. 1961(5) (emphasis added), not that it 'means' two such acts. The implication is that while two acts are necessary, they may not be sufficient."

It should be noted that [Condict v. Condict, 815 F.2d 579 \(10th Cir. 1987\)](#) was stated as superseded by *Maxwell v. Wilson*, 766 P.2d 909, 108 N.M. 65, 1988 NMSC 96 (N.M. 1988). However, this subsequent treatment appears to be on other grounds, as the standard for establishing a pattern of racketeering activity articulated in *Condict* continues to be cited in more recent 10th Circuit RICO cases.

## **The "Continuity Plus Relationship" Test**

Following the Supreme Court's guidance, the 10th Circuit employs what is known as the "continuity plus relationship" test to determine whether a pattern exists. As articulated in [Bixler v. Foster, 596 F.3d 751, 761 \(10th Cir. 2010\)](#), "A viable RICO claim requires a showing of 'continuity plus relationship.'"

### **The Relationship Component**

The relationship component is relatively straightforward. According to [Bixler v. Foster, 596 F.3d 751, 761 \(10th Cir. 2010\)](#), "The relationship test is not a cumbersome one for a RICO plaintiff. A showing that predicate acts 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 is essentially all that is needed."

In practice, when predicate acts are part of a common fraudulent scheme, they generally satisfy the relationship requirement, as noted in [Condict v. Condict, 826 F.2d 923 \(10th Cir. 1987\)](#): "It is clear that when, as here, the acts are part of a common fraudulent scheme, they satisfy the relationship requirement of *Sedima*."

### **The Continuity Component**

The continuity requirement presents a more significant hurdle for RICO plaintiffs. As [Bixler v. Foster, 596 F.3d 751, 761 \(10th Cir. 2010\)](#) observed, "The showing required for 'continuity,' on the other hand, 'is more difficult to meet.'"

The 10th Circuit, following Supreme Court precedent, recognizes that "'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." This dual approach provides two distinct pathways for establishing continuity.

## **Closed-Ended Continuity in the 10th Circuit**

Closed-ended continuity refers to a completed period of repeated criminal conduct. According to [Johnson v. Heath, 56 F.4th 851, 859-60 \(10th Cir. 2022\)](#), this can be established by alleging a "closed period of repeated racketeering conduct."

## **Temporal Dimension: Substantial Period Requirement**

A critical aspect of closed-ended continuity is its temporal dimension. As explained in [Sil-Flo, Inc. v. SFHC, Inc., 917 F.2d 1507 \(10th Cir. 1990\)](#), closed-ended continuity requires "a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months are insufficient."

The 10th Circuit has not established a bright-line rule for what constitutes a "substantial period of time," leaving this determination to case-specific analysis. However, the court has indicated that activities spanning only weeks or months would generally be insufficient, while schemes extending over years are more likely to meet this requirement.

In [Levey v. Wetherall, Civil Action No. 1:19-cv-02294-DDD-MEH \(D. Colo. Sep 29, 2020\)](#), the court reiterated that the predicate acts at issue must "extend over a substantial period of time; a few weeks or months is considered insubstantial."

## **Beyond Duration: The Extensiveness Factor**

Duration alone is not determinative of closed-ended continuity. In [Skurkey v. Daniel](#), the court explained that in evaluating closed-ended continuity, it considers "the number of victims, the number of racketeering acts, the variety of racketeering acts, whether the injuries were distinct, the complexity and size of the scheme, and the nature or character of the enterprise."

This multi-factor approach reflects the 10th Circuit's concern with identifying patterns of criminal activity that represent the type of sustained, organized criminal behavior that RICO was designed to address, rather than isolated or limited criminal schemes.

## **Single Scheme Limitation**

The 10th Circuit has expressed skepticism about finding closed-ended continuity when the alleged pattern involves a single scheme directed at a single victim to accomplish a discrete goal. In [Nation v. Shah, 4:19-cv-00588-JDR-JFJ \(N.D. Okla. Oct 30, 2024\)](#), the court noted that establishing continuity is "more problematic" and "more difficult to meet" than the relationship requirement.

Similarly, in [Thompson v. Wyoming Alaska, Inc., 652 F.Supp. 1222 \(D. Utah 1987\)](#), the court, referencing 10th Circuit precedent, observed that a scheme involving "one victim," "one time," and "one discrete goal" would constitute an "isolated incident" that fails to satisfy the continuity requirement.

# Open-Ended Continuity in the 10th Circuit

Open-ended continuity provides an alternative avenue for establishing a pattern when the alleged criminal activity, though perhaps of shorter duration, demonstrates a clear threat of continuing into the future.

## Threat of Future Criminal Activity

The essence of open-ended continuity is the threat of future criminal conduct related to past criminal activity. As stated in [Phelps v. Wichita Eagle-Beacon](#), 886 F.2d 1262, 1273 (10th Cir. 1989), "Open-ended continuity requires a clear threat of future criminal conduct related to past criminal conduct."

This future-oriented focus allows RICO liability to attach even when the pattern has not yet extended over a substantial period, provided there is a demonstrable risk that the criminal activity will continue.

## Three Paths to Establishing Open-Ended Continuity

The 10th Circuit has recognized several ways to establish open-ended continuity. According to [Nation v. Shah](#), 4:19-cv-00588-JDR-JFJ (N.D. Okla. Oct 30, 2024), open-ended continuity can be established when racketeering acts:

1. "Involved implicit or explicit threats of repetition";
2. "Formed the operations of an association that exists for criminal purposes"; or
3. Were "part of the defendants' regular way of conducting a legitimate enterprise."

Similarly, [Resolution Trust Corp. v. Stone](#), 998 F.2d 1534, 1543 (10th Cir. 1993) explained that 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."

## Case-Specific Analysis

The 10th Circuit emphasizes that determining open-ended continuity requires a fact-intensive, case-specific analysis. As [Johnson v. Heath](#), 56 F.4th 851 (10th Cir. 2022) noted, "No universal standard precisely defining continuity exists because it ultimately 'depends on the specific facts of each case.'"

This flexible approach allows courts to assess whether the particular circumstances of a case indicate a genuine threat of continued criminal activity or merely represent isolated or sporadic criminal behavior.

# Contrasting Open-Ended and Closed-Ended Continuity

The distinction between closed-ended and open-ended continuity is primarily temporal. Closed-ended continuity looks backward at completed conduct, while open-ended continuity looks forward to potential future conduct.

## Temporal Focus

As explained in [Schrag v. Dinges, 788 F.Supp. 1543 \(D. Kan. 1992\)](#), closed-ended continuity involves "a closed period of repeated conduct," while open-ended continuity concerns "past conduct that by its nature projects into the future with a threat of repetition."

The court further clarified that a RICO plaintiff "may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time." In contrast, "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."

## Different Evidentiary Requirements

The evidence required to establish each type of continuity differs significantly. For closed-ended continuity, the focus is on the duration and extensiveness of past criminal activity. For open-ended continuity, the focus shifts to indicators suggesting that the criminal activity will continue into the future.

As summarized in "RICO: A Primer" (2022-01-31), closed-ended continuity requires "[p]roving 'a series of related predicate acts extending over a substantial period of time,'" while open-ended continuity requires "[a] threat of 'continuing criminal activity extending indefinitely into the future,' in light of the nature of the enterprise and predicate acts alleged."

## Complementary Approaches

These two forms of continuity are not mutually exclusive but rather complementary approaches designed to capture different types of ongoing criminal activity. As the 10th Circuit recognized in [Edwards v. First Nat. Bank, Bartlesville, Oklahoma, 872 F.2d 347 \(10th Cir. 1989\)](#), some criminal schemes may have discrete objectives that, once accomplished, bring the scheme to an end, while others involve "open-ended fraudulent activity" without "a single goal that, when achieved, will bring the activity to an end."

The dual approach to continuity allows courts to apply RICO in both contexts, provided the criminal activity rises to the level of a genuine pattern rather than isolated or sporadic criminal acts.

# Special Considerations in the 10th Circuit

The 10th Circuit's approach to RICO continuity includes several nuanced considerations that distinguish its jurisprudence.

## Multi-Factor Analysis

While the 10th Circuit applies the Supreme Court's "continuity plus relationship" test, it also continues to use a multi-factor approach developed before the Supreme Court's definitive interpretation in *H.J. Inc.* As noted in secondary materials on RICO from 2005-03-22, "The Seventh and Tenth Circuits employ the *H.J. Inc.* test and consider duration and open-endedness of the racketeering activity, but cling to the multi-factor test applied prior to *H.J. Inc.*"

This multi-factor approach considers not just temporal aspects but also the number of victims, variety of predicate acts, distinctness of injuries, and complexity of the scheme, providing a more holistic assessment of whether the alleged conduct constitutes a pattern.

## Single Scheme Considerations

The 10th Circuit has repeatedly addressed the question of whether a single fraudulent scheme can constitute a pattern. In [Torwest DBC, Inc. v. Dick, 810 F.2d 925, 929 \(10th Cir. 1987\)](#), the court held that a "single fraudulent scheme that has a definite purpose, the completion of which will end the scheme" does not establish a pattern.

However, the court contrasted this with "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." In such cases, the open-ended nature of the scheme may satisfy the continuity requirement even absent multiple discrete schemes.

## Emphasis on Congressional Intent

The 10th Circuit frequently grounds its analysis in RICO's legislative history and congressional intent. As referenced in [Bixler v. Foster, 596 F.3d 751, 761 \(10th Cir. 2010\)](#), "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.'"

This focus on congressional intent serves as a guiding principle in distinguishing between ordinary criminal conduct and the type of sustained criminal activity that RICO was designed to address.

# Practical Application in Recent 10th Circuit Cases

Recent cases in the 10th Circuit illustrate the practical application of these continuity principles.

## **[Johnson v. Heath \(2022\)](#)**

In [Johnson v. Heath, 56 F.4th 851 \(10th Cir. 2022\)](#), the 10th Circuit reiterated that continuity "depends on the specific facts of each case" and provided a clear articulation of the distinction between closed-ended and open-ended continuity. The court explained that closed-ended continuity refers to "a closed period of repeated racketeering conduct," while open-ended continuity consists of "racketeering conduct that threatens future repetition."

The court further clarified that plaintiffs can establish open-ended continuity by showing that "the racketeering acts involved implicit or explicit threats of repetition, that they formed the operations of an association that exists for criminal purposes, or that they were the defendants' regular way of conducting a legitimate enterprise."

## **[Nation v. Shah \(2024\)](#)**

In [Nation v. Shah, 4:19-cv-00588-JDR-JFJ \(N.D. Okla. Oct 30, 2024\)](#), a district court within the 10th Circuit emphasized the challenge of establishing continuity, describing it as "more problematic" and "more difficult to meet" than the relationship requirement.

The court reiterated the dual approaches to continuity, noting that closed-ended continuity requires "a closed period of repeated racketeering conduct," while open-ended continuity can be established when racketeering acts "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."

## **[Suddath v. Oklahome Homebuilders, LLC \(2024\)](#)**

In [Suddath v. Oklahome Homebuilders, LLC, CIV-24-745-SLP \(W.D. Okla. Nov 08, 2024\)](#), another district court within the 10th Circuit provided a comprehensive overview of RICO requirements, including the continuity element of the pattern requirement.

The court explained that the continuity requirement "expresses congressional intent that 'RICO reach activities that amount to or threaten long-term criminal activity,'" and reiterated that continuity "is both a closed- and open-ended concept." The court clarified that a closed-ended series of predicate acts is insufficient to support a finding of a pattern where those acts "constitute[] a single scheme to accomplish 'one discrete goal,' directed at one individual with no potential to extend to other persons or entities."

# **Challenges in Establishing Continuity**

Establishing continuity in RICO claims presents several challenges for plaintiffs in the 10th Circuit.

## **Temporal Challenges for Closed-Ended Continuity**

For closed-ended continuity, the requirement of a "substantial period of time" can be difficult to satisfy, particularly in cases involving schemes that unfold relatively quickly. While the 10th Circuit has not established a specific timeframe that qualifies as "substantial," it has indicated that periods of "weeks or months" are generally insufficient.

This temporal requirement can be particularly challenging for plaintiffs alleging fraud schemes that, while involving multiple acts and potentially significant harm, occur within a compressed timeframe.

## **Predictive Challenges for Open-Ended Continuity**

For open-ended continuity, the challenge lies in demonstrating a credible threat of future criminal activity. This requires plaintiffs to present evidence suggesting that the criminal conduct is likely to continue, which can be difficult when the conduct in question has been interrupted by law enforcement action or the filing of the lawsuit itself.

The 10th Circuit's requirement of a "clear threat of future criminal conduct related to past criminal conduct" sets a high bar that requires more than mere speculation about potential future activities.

## **Overcoming the Single Scheme Limitation**

Given the 10th Circuit's skepticism toward finding continuity in single-scheme cases with discrete objectives, plaintiffs facing such circumstances must carefully frame their allegations to emphasize either the substantial duration of the scheme (for closed-ended continuity) or the threat of future similar activity (for open-ended continuity).

This may involve highlighting the ongoing nature of the enterprise, the defendants' history of similar conduct, or the structure of the scheme itself as indicative of a continuing threat rather than a one-time event.

## **Conclusion**

Civil RICO claims in the 10th Circuit require plaintiffs to demonstrate a pattern of racketeering activity, which includes both relationship and continuity among the predicate acts. While the relationship requirement is relatively straightforward, the continuity requirement presents a more substantial challenge.

The 10th Circuit recognizes two forms of continuity: closed-ended and open-ended. Closed-ended continuity requires a series of related predicates extending over a substantial period of time, with acts spanning only weeks or months being insufficient. Open-ended continuity requires showing that past conduct projects into the future with a threat of repetition, which can be established by demonstrating that the predicates involve a threat of long-term activity, form the operations of a criminal association, or constitute a regular way of conducting business.

In applying these standards, the 10th Circuit conducts a fact-specific analysis that considers not only the temporal aspects of the alleged pattern but also factors such as the number of victims, variety of predicate acts, distinctness of injuries, and complexity of the scheme. This holistic approach reflects the court's commitment to implementing RICO in a manner consistent with congressional intent while avoiding its application to ordinary criminal conduct or isolated offenders.

For practitioners bringing or defending RICO claims in the 10th Circuit, understanding these nuanced requirements for establishing pattern through continuity is essential to effectively navigating this complex area of law.

## **Legal Authorities**

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

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

#### **Extract**

To establish continuity, the plaintiff must demonstrate either 'a closed period of repeated conduct' or 'past conduct that by its nature projects into the future with a threat of repetition.' *H.J. Inc. v. Northwestern Bell Telephone Co.*, 109 S.Ct. at 2902. These two forms of continuity are respectively referred to as closed-ended and open-ended continuity. *Id.* The Supreme Court held that closed-ended continuity requires 'a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months' are insufficient. *Id.* Open-ended continuity requires a clear threat of future criminal conduct related to past criminal conduct. *Id.*

#### **Summary**

Clear explanation of the requirements for establishing continuity in RICO civil claims within the Tenth Circuit. It distinguishes between closed-ended and open-ended continuity, referencing the Supreme Court's decision in *H.J. Inc. v. Northwestern Bell Telephone Co.* Closed-ended continuity requires a series of related predicate acts over a substantial period, while open-ended continuity requires a clear threat of future criminal conduct. This information is directly relevant to understanding the legal standards for RICO claims in the Tenth Circuit.

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

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

### **Extract**

No universal standard precisely defining continuity exists because it ultimately 'depends on the specific facts of each case.' *H.J. Inc.*, 492 U.S. at 241–42, 109 S.Ct. 2893. Continuity can be either closed or open ended. *Id.* at 241, 109 S.Ct. 2893. Closed-ended continuity is a closed period of repeated racketeering conduct, while open-ended continuity consists of racketeering conduct that threatens future repetition. *Id.* Plaintiffs can establish open-ended continuity by showing that the racketeering acts involved implicit or explicit threats of repetition, that they formed the operations of an association that exists for criminal purposes, or that they were the defendants' regular way of conducting a legitimate enterprise. *Id.* at 242–43, 109 S.Ct. 2893.

### **Summary**

Detailed explanation of the requirements for establishing continuity in RICO civil claims within the Tenth Circuit. It distinguishes between closed-ended and open-ended continuity, explaining the conditions under which each can be established. This is directly relevant to understanding the legal standards for RICO claims in this jurisdiction.

[Sil-Flo, Inc. v. SFHC, Inc., 917 F.2d 1507 \(10th Cir. 1990\)](#)

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

### **Extract**

To establish continuity, the plaintiff must demonstrate either 'a closed period of repeated conduct' or 'past conduct that by its nature projects into the future with a threat of repetition.' *H.J. Inc. v. Northwestern Bell Telephone Co.*, 109 S.Ct. at 2902. These two forms of continuity are respectively referred to as closed-ended and open-ended continuity. *Id.* The Supreme Court held that closed-ended continuity requires 'a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months' are insufficient. *Id.* Open-ended continuity requires a clear threat of future criminal conduct related to past criminal conduct. *Id.*

### **Summary**

Clear explanation of the requirements for establishing continuity in RICO civil claims, distinguishing between closed-ended and open-ended continuity. Closed-ended continuity requires a series of related predicate acts over a

substantial period, while open-ended continuity requires a threat of future criminal conduct. These standards are derived from the Supreme Court's interpretation and are applied by the Tenth Circuit.

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

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

### **Extract**

To establish a civil RICO claim under 18 U.S.C. 1962(c), BOMC must show that the Title Companies '(1) participated in the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' *Resolution Trust Corp. v. Stone*, 998 F.2d 1534, 1541 (10th Cir. 1993) (citing *Phelps v. Wichita Eagle-Beacon*, 886 F.2d 1262, 1273 (10th Cir. 1989)). The Supreme Court has adopted the 'operation or management' test to determine whether a defendant has 'participated in the conduct' of the affairs of a RICO enterprise. *Id.* (citing *Reves v. Ernst & Young (Reves II)*, 507 U.S. 170, 113 S. Ct. 1163, 1170-73, 122 L. Ed. 2d 525 (1993)). For liability to be imposed under that test, the defendants must have participated in the operation or management of the RICO enterprise. *Id.*

### **Summary**

Legal standards for establishing a civil RICO claim under 18 U.S.C. 1962(c) in the Tenth Circuit. It specifies the elements required: participation in the conduct of an enterprise through a pattern of racketeering activity. The passage also references the "operation or management" test from the Supreme Court, which is used to determine if a defendant has participated in the conduct of a RICO enterprise. This test requires that the defendant must have participated in the operation or management of the enterprise. However, the passage does not address the requirements for open-ended versus closed-ended continuity, which are also relevant to RICO claims.

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

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

### **Extract**

To prove a claim under § 1962(c), the Plaintiff must show that PIIGI (1) participated in the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity... The Supreme Court has concluded that Congress intended that the pattern element 'requires the showing of a relationship between the predicates, ... and the threat of continuing activity'--that is, 'continuity plus relationship.'... 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, 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**

To establish a RICO claim under § 1962(c) in the Tenth Circuit, a plaintiff must demonstrate participation in the conduct of an enterprise through a pattern of racketeering activity. The pattern element requires showing a relationship between predicate acts and a threat of continuing activity, known as "continuity plus relationship." Open-ended continuity can be shown by demonstrating a distinct threat of long-term racketeering activity or that the predicates are a regular way of conducting the defendant's business.

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

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

### **Extract**

Appellant contends the trial court erred in dismissing his claim under 18 U.S.C. Sec. 1961, et seq. or the Racketeer Influenced and Corrupt Organizations Act. In *Torwest DBC, Inc. v. Dick*, 810 F.2d 925, 927-929 (10th Cir.), we discussed what a plaintiff must plead in order to establish a RICO violation: 'A violation of section 1962(c) thus 'requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985). RICO defines racketeering activity as, inter alia, any act that is indictable under 18 U.S.C. Sec. 1341 (mail fraud) or 18 U.S.C. Sec. 1343 (wire fraud). See 18 U.S.C. Sec. 1961(1)(B). RICO also states that a ' "pattern of racketeering activity" requires at least two acts of racketeering activity.' 18 U.S.C. Sec. 1961(5). ... [T]o establish a RICO pattern, a plaintiff must also demonstrate continuity, that is, 'the threat of continuing activity.' *Sedima*, 105 S.Ct. at 3285 n. 14. This element is derived from RICO's legislative history, which indicates that RICO does not apply to 'sporadic activity' or to the 'isolated offender'. *Id.* 'The continuity requirement has been the source of considerable difficulty. Courts generally agree that to make an adequate showing of continuity under *Sedima*, a plaintiff must demonstrate some facts from which at least a threat of ongoing illegal conduct may be inferred. 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**

Continuity involves showing a threat of ongoing illegal conduct, distinguishing between sporadic or isolated activities and those that suggest

a continuing threat. This is crucial for understanding both open-ended and closed-ended continuity in RICO claims.

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

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

### **Extract**

A violation of section 1962(c) thus 'requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985). ... RICO also states that a 'pattern of racketeering activity' requires at least two acts of racketeering activity. ... *Sedima* thus makes clear that a RICO violation requires continuous and related racketeering acts. ... However, to establish a RICO pattern, a plaintiff must also demonstrate continuity, that is, 'the threat of continuing activity.' *Sedima*, 105 S.Ct. at 3285 n. 14. ... 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**

Requirements for a RICO violation under section 1962(c), emphasizing the need for conduct of an enterprise through a pattern of racketeering activity. It highlights that a pattern requires at least two acts of racketeering activity and must demonstrate continuity and relationship. The passage also discusses the concept of continuity, noting that it involves the threat of continuing activity. It distinguishes between closed-ended continuity, which involves a series of related acts over a substantial period, and open-ended continuity, which involves ongoing schemes without a single goal that would end the activity. This information is directly relevant to understanding the legal standards for RICO civil claims in the Tenth Circuit.

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

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

### **Extract**

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

"Racketeering activity" is defined in 18 U.S.C. § 1961(1)(B) as any "act which is indictable" under federal law and specifically includes mail fraud, wire

fraud and racketeering. "A person does not have to be formally convicted of any predicate act before [civil RICO] liability. .. may attach." Tal, 453 F.3d at 1261-62. But the predicate acts at issue must "extend over a substantial period of time; a few weeks or months is considered insubstantial." Midwest Grinding Co. v. Spitz, 976 F.2d 1016, 1025 (7th Cir. 1992) (alterations adopted, quoting H.J. Inc. v. Nw. Bell Tel. Co., 492 U.S. 229, 242 (1989)). The predicate acts must also affect more than a single victim and aim to accomplish more than one discrete goal.

## Summary

Elements required for a civil RICO claim in the 10th Circuit, which include involvement with an enterprise through a pattern of racketeering activity. It specifies that racketeering activity includes acts indictable under federal law, such as mail and wire fraud. Importantly, it notes that predicate acts must extend over a substantial period and affect more than one victim or goal, which relates to the concept of continuity in RICO claims. However, the passage does not explicitly differentiate between open-ended and closed-ended continuity.

[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." See Bixler v. Foster, 596 F.3d 751, 761 (10th Cir. 2010) (indicating that the continuity requirement "is more difficult to meet" (citation and quotation marks omitted)). For RICO purposes, continuity comes in one of two forms: Closed-ended continuity can be established by alleging a "closed period of repeated racketeering conduct." Johnson, 56 F.4th at 859-60 (citing H.J. Inc., 492 U.S. at 241-43). 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." Id. (citing J. Inc., 492 U.S. at 241-43). A plaintiff who cannot establish one of these two forms of continuity cannot state a viable claim under RICO. E.g., Bixler, 596 F.3d at 761 (affirming dismissal where the complaint failed to allege either the closed-ended or open-ended continuity of predicate acts required to form a RICO pattern).

## Summary

Detailed explanation of the continuity requirement for RICO claims in the 10th Circuit, distinguishing between closed-ended and open-ended continuity. It cites relevant case law and explains the criteria for each type of continuity, which are essential for establishing a RICO pattern.

[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.” ... A “pattern” requires at least two predicate acts. 18 U.S.C. § 1961(5). Predicate acts must be violations of certain statutes, 18 U.S.C. § 1961(1), here alleged to be federal mail fraud and wire fraud statutes. Additionally, a Plaintiff must allege facts from which the Court can conclude the existence of a pattern, that is that the “predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity.” *H.J., Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 240 (1989) (emphasis original). The Supreme Court has explained that there are two elements to finding a pattern for RICO purposes: “continuity plus relationship.” ... [C]losed-ended continuity consists of a closed period of repeated, related racketeering acts that do not necessarily threaten future repetition. ... closed-ended continuity requires a series of related racketeering acts over a “substantial period of time.” ... In evaluating whether the Plaintiff has pled sufficient facts to support the extensiveness prong the Court considers “the number of victims, the number of racketeering acts, the variety of racketeering acts, whether the injuries were distinct, the complexity and size of the scheme, and the nature or character of the enterprise.” ... 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**

Detailed explanation of the legal standards for RICO civil claims in the Tenth Circuit, specifically addressing the requirements for establishing a “pattern” of racketeering activity. It outlines the necessity of demonstrating both “continuity” and “relationship” among predicate acts. The passage distinguishes between closed-ended continuity, which involves a substantial period of repeated acts, and open-ended continuity, which requires a threat of future criminal conduct. The passage also provides criteria for evaluating the extensiveness of the racketeering scheme, which is crucial for establishing closed-ended continuity.

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

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

## **Extract**

As many commentators have pointed out, the definition of a 'pattern of racketeering activity' differs from the other provisions in Sec. 1961 in that it states that a pattern 'requires at least two acts of racketeering activity,' Sec. 1961(5) (emphasis added), not that it 'means' two such acts. The implication is that while two acts are necessary, they may not be sufficient. Indeed, in common parlance two of anything do not generally form a 'pattern.' The legislative history supports the view that two isolated acts of racketeering activity do not constitute a pattern. As the Senate Report explained: 'The target of [RICO] is thus not sporadic activity. The infiltration of legitimate business normally requires more than one 'racketeering activity' and the threat of continuing activity to be effective. It is this factor of continuity plus relationship which combines to produce a pattern.' ... 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. See, e.g., *Morgan v. Bank of Waukegan*, 804 F.2d 970, 976 (7th Cir.1986); see also *Illinois Dept. of Revenue v. Phillips*, 771 F.2d 312 (7th Cir.1985). Other courts may require additional proof showing that the defendants have engaged in similar activity in the past, or have been involved in other criminal activity, or pose a threat of similar activity in the future.

## **Summary**

Requirements for establishing a "pattern of racketeering activity" under RICO, emphasizing that two acts are necessary but not always sufficient. It highlights the need for continuity and relationship, explaining that sporadic or isolated acts do not meet the standard. The passage also addresses the concept of open-ended continuity, where a scheme without a single goal may satisfy the continuity requirement if it poses a threat of ongoing fraudulent activity. This is relevant to understanding the legal standards for RICO claims in the Tenth Circuit.

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

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

### **Extract**

Specifically, the defendants concede that an actionable RICO claim need not allege a distinct RICO injury, nor need it allege that the defendants have already been indicted for, or convicted of, the predicate acts of mail or wire fraud, or that the defendants had ties to organized crime. However, the defendants do argue that under *Sedima* the plaintiffs must still allege that the defendants are conducting, or are participating in conducting, the affairs of an 'enterprise,' i.e., *Condict Ranches*, 'through a pattern of racketeering activity.' ... In this case, the court and the parties assumed for purposes of

the court's ruling that defendants engaged in numerous racketeering acts. It is clear that when, as here, the acts are part of a common fraudulent scheme, they satisfy the relationship requirement of *Sedima*. ... However, to establish a RICO pattern, a plaintiff must also demonstrate continuity, that is, 'the threat of continuing activity.' *Sedima*, 105 S.Ct. at 3285 n. 14. This element is derived from RICO's legislative history, which indicates that RICO does not apply to 'sporadic activity' or to the 'isolated offender'. ... 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**

For a RICO claim in the Tenth Circuit, it is not necessary to allege a distinct RICO injury or that the defendants have been indicted or convicted of predicate acts. However, plaintiffs must allege that defendants are conducting an enterprise through a pattern of racketeering activity. The passage highlights the importance of demonstrating continuity, which involves showing a threat of ongoing activity. The passage also discusses the distinction between open-ended and closed-ended continuity, noting that an ongoing scheme without a single goal may satisfy the continuity requirement.

[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.' *Id.* at 239, 109 S.Ct. at 2900. The 'relationship' requirement is satisfied when the racketeering acts 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.' *Id.* at 240, 109 S.Ct. at 2901 (citing *Sedima*, 473 U.S. at 496 n. 14, 105 S.Ct. at 3285 n. 14). 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

The passage explains the requirements for establishing a "pattern" of racketeering activity under RICO, which includes both "continuity" and "relationship." The "continuity" requirement can be satisfied through either a closed-ended or open-ended approach. Closed-ended continuity involves a series of related predicates over a substantial period, while open-ended continuity involves predicates that pose a threat of future repetition. This explanation is based on the Supreme Court's interpretation, which is applicable to RICO claims in the Tenth Circuit.

[Edwards v. First Nat. Bank, Bartlesville, Oklahoma, 872 F.2d 347 \(10th Cir. 1989\)](#)

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

### Extract

In this case, the court and the parties assumed for purposes of the court's ruling that defendants engaged in numerous racketeering acts. It is clear that when, as here, the acts are part of a common fraudulent scheme, they satisfy the relationship requirement of *Sedima*. See, e.g., *Superior Oil Co. v. Fulmer*, 785 F.2d 252 (8th Cir.1986). However, to establish a RICO pattern, a plaintiff must also demonstrate continuity, that is, 'the threat of continuing activity.' *Sedima*, 105 S.Ct. at 3285 n. 14. This element is derived from RICO's legislative history, which indicates that RICO does not apply to 'sporadic activity' or to the 'isolated offender.' *Id.* The continuity requirement has been the source of considerable difficulty. Courts generally agree that to make an adequate showing of continuity under *Sedima*, a plaintiff must demonstrate some facts from which at least a threat of ongoing illegal conduct may be inferred. 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. Courts that have considered a RICO claim grounded on this type of scheme have therefore required some additional evidence showing that the scheme was not an isolated occurrence. See, e.g., *Lipin Enters. Inc. v. Lee*, 803 F.2d 322, 324 (7th Cir.1986) (acts to defraud one victim one time insufficient in absence of showing of other victims or other frauds). 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. See, e.g., *Morgan v. Bank of Waukegan*, 804 F.2d 970, 976 (7th Cir.1986); see also *Illinois Dept. of Revenue v. Phillips*, 771 F.2d 312 (7th Cir.1985). Other courts may require additional proof showing that the defendants have engaged in similar activity in the past, or have been

involved in other criminal activity, or pose a threat of similar activity in the future. See, e.g., *Superior Oil Co.*, 785 F.2d at 257.

## Summary

Detailed explanation of the continuity requirement for RICO claims, distinguishing between closed-ended and open-ended continuity. It explains that a single scheme with a discrete objective does not imply ongoing activity, whereas an open-ended scheme without a single goal may satisfy the continuity requirement. This is crucial for understanding how courts in the Tenth Circuit evaluate RICO claims.

[Suddath v. Oklahome Homebuilders, LLC, CIV-24-745-SLP \(W.D. Okla. Nov 08, 2024\)](#)

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

### Extract

RICO provides a civil cause of action for treble damages to anyone injured “by reason of” certain racketeering activity. 18 U.S.C. §§ 1964(c), 1962. “To plead a valid RICO claim, a plaintiff must plausibly allege that a defendant (1) conducted the affairs (2) of an enterprise (3) through a pattern (4) of racketeering activity.” *Johnson v. Heath*, 56 F.4th 851, 858 (10th Cir. 2022) (internal quotation marks and citation omitted). Defendants challenge, inter alia, the sufficiency of Plaintiffs’ allegations with respect to the third element - a “pattern” of racketeering activity. “A ‘pattern’ requires at least two predicate acts.” *Bixler v. Foster*, 596 F.3d 751, 761 (10th Cir. 2010) (citing 18 U.S.C. § 1961(5)). And those predicate acts themselves must amount to or otherwise constitute a threat of continuing racketeering activity. *Id.* This continuity requirement expresses congressional intent that “RICO reach activities that amount to or threaten long-term criminal activity.” *Id.* (citing *H.J., Inc. v. Northwestern Bell Tele. Co.*, 492 U.S. 229, 243 n. 4 (1989)). “‘Continuity’ is both a closed-and open-ended concept: closed-ended referring to a closed period of repeated conduct and open-ended referring to conduct that by its nature projects into the future with a threat of repetition.” *Resol. Tr. Corp. v. Stone*, 998 F.2d 1534, 1543 (10th Cir. 1993). “A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time.” *Id.* A closed-ended series of predicate acts is not sufficient to support a finding of a pattern of racketeering activity, however, where those acts “constitute[ ] a single scheme to accomplish ‘one discrete goal,’ directed at one individual with no potential to extend to other persons or entities.” 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.” *Resol. Tr.*, 998 F.2d at 1543. “Open-ended continuity requires a clear threat of future criminal conduct related to past criminal conduct.” *Phelps v. Wichita Eagle-Beacon*, 886 F.2d 1262, 1273 (10th Cir. 1989).

## **Summary**

Detailed explanation of the legal standards for RICO civil claims in the Tenth Circuit. It outlines the elements required to plead a valid RICO claim, emphasizing the necessity of demonstrating a "pattern" of racketeering activity, which involves at least two predicate acts. The passage further explains the concept of continuity, distinguishing between closed-ended and open-ended continuity. Closed-ended continuity involves a series of related predicates over a substantial period, while open-ended continuity requires a distinct threat of long-term racketeering activity or a regular way of conducting business that projects into the future. This information is crucial for understanding the requirements for establishing a RICO claim in the Tenth Circuit.

[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.'

## **Summary**

The passage provides insight into the Tenth Circuit's interpretation of the continuity requirement for RICO claims. It references the case *Torwest DBC, Inc. v. Dick*, which is a precedent in the Tenth Circuit. The court in *Torwest* emphasized the need for demonstrating a threat of ongoing illegal conduct to satisfy the continuity requirement. The passage also distinguishes between closed-ended continuity, which involves a single scheme with a discrete goal, and open-ended continuity, which involves a scheme that contemplates ongoing 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**

The passage provides insight into the Tenth Circuit's approach to determining a "pattern" of racketeering activity under RICO. It highlights that the Tenth Circuit has not established a definitive test but has considered the nature of the scheme, particularly distinguishing between schemes with a definite end and those that are open-ended. The court suggests that an open-ended scheme may satisfy the continuity requirement, at least at the pleading stage.

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

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

## **Extract**

RICO was enacted to address "racketeering activity." The statute defines "racketeering activity" to encompass specified state and federal offenses, which are referred to as predicate acts. These predicate acts include any act indictable under enumerated federal statutes, 18 U.S.C. §§ 1961(1)(B)-(C), (E)-(G), specified crimes chargeable under state law, § 1961(1)(A), and any offense involving bankruptcy or securities fraud or drug-related activity that is punishable under federal law, § 1961(1)(D). Predicate acts can give rise to a RICO claim when they are part of a "pattern of racketeering activity, " which is defined as a series of related predicates that together demonstrate the existence or threat of continued criminal activity. *H.J. Inc. v. N.W. Bell Tel. Co.*, 492 U.S. 229, 239 (1989).

## **Summary**

The passage explains the concept of "racketeering activity" and the requirement of a "pattern of racketeering activity" for RICO claims, which involves a series of related predicate acts that demonstrate the existence or threat of continued criminal activity. This is relevant to understanding the

legal standards for RICO claims, including the concepts of continuity, which are essential for establishing a pattern.

[Bixler v. Foster, 596 F.3d 751 \(10th Cir. 2010\)](#)

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

### **Extract**

A RICO claim 'must allege a violation of 18 U.S.C. § 1962, which consists of four elements: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' Gillmor, 490 F.3d at 797 (quotation omitted). A 'pattern' requires at least two predicate acts. 18 U.S.C. § 1961(5). In addition, '[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.' Hall v. Witteman, 584 F.3d 859, 867 (10th Cir.2009) (quotation omitted). A viable RICO claim requires a showing of 'continuity plus relationship.' Sedima, 473 U.S. at 496 n. 14, 105 S.Ct. 3275 (quotation omitted). 'The relationship test is not a cumbersome one for a RICO plaintiff. A showing that predicate acts 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 is essentially all that is needed.' Boone v. Carlsbad Bancorporation, Inc., 972 F.2d 1545, 1555 (10th Cir. 1992) (quotations omitted). The showing required for 'continuity,' on the other hand, 'is more difficult to meet.' Id. 'Continuity' is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition.' H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 241, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989). 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.' Id. at 243 n. 4, 109 S.Ct. 2893.

### **Summary**

Legal standards for RICO civil claims in the Tenth Circuit, specifically focusing on the requirements for establishing a "pattern" of racketeering activity. It explains that a RICO claim must allege a violation of 18 U.S.C. § 1962, which includes four elements: conduct, enterprise, pattern, and racketeering activity. The "pattern" requires at least two predicate acts and must demonstrate "continuity plus relationship." The passage further distinguishes between open-ended and closed-ended continuity, explaining that continuity can refer to a closed period of repeated conduct or past conduct that projects into the future with a threat of repetition. This is essential for understanding how to establish a RICO pattern in the Tenth Circuit.

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

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

### **Extract**

The elements of a civil RICO claim are (1) investment in, control of, or conduct of (2) an enterprise (3) through a pattern (4) of racketeering activity. 18 U.S.C. § 1962(a), (b), & (c). 'Racketeering activity' is defined in 18 U.S.C. § 1961(1)(B) as any 'act which is indictable' under federal law and specifically includes mail fraud, wire fraud and racketeering. ... A 'pattern' of racketeering is defined as 'at least two acts of racketeering activity, ... which occurred within ten years' of each other. 18 U.S.C. § 1961(5). However, because 'RICO is not aimed at the isolated offender,' proof of two or more predicate acts are not sufficient to prove a pattern unless there is a relationship between the predicate acts and a threat of continuing activity. *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989); *Duran v. Carris*, 238 F.3d 1268, 1271 (10th Cir. 2001). Continuity of threat requires both proof of 'a series of related predicates extending over a substantial period of time,' as well as a 'showing that the predicates themselves involve a distinct threat of long-term racketeering activity ... or that the predicates are a regular way of conducting the defendant's ongoing legitimate business or the RICO enterprise.' *Resolution Trust Corp.*, 998 F.2d at 1543. To determine continuity we examine both the duration of the related predicate acts and the extensiveness of the RICO enterprise's scheme. *Id.*

### **Summary**

Detailed explanation of the elements required for a civil RICO claim, specifically focusing on the necessity of demonstrating a "pattern of racketeering activity." It clarifies that merely proving two predicate acts is insufficient; there must be a relationship between these acts and a threat of ongoing activity. The passage also outlines the requirements for continuity, which involves either a series of related predicates over a substantial period or a distinct threat of long-term racketeering activity. This is directly relevant to understanding the legal standards for RICO claims in the Tenth Circuit, including the concepts of open-ended and closed-ended continuity.

[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**

Clear explanation of the continuity requirement for RICO claims, distinguishing between closed-ended and open-ended continuity. Closed-ended continuity requires a series of related predicates over a substantial period, while open-ended continuity involves conduct that poses a future threat. This understanding is crucial for evaluating RICO claims in the 10th Circuit, as it aligns with the general standards applied across various circuits.

[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. 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 Seventh and Tenth Circuits employ the H.J. Inc. test and consider duration and open-endedness of the racketeering activity, but cling to the multi-factor test applied prior to H.J. Inc.

## **Summary**

The passage provides insight into how the Tenth Circuit approaches the continuity requirement for RICO claims. It highlights that the Tenth Circuit uses the H.J. Inc. test, which involves assessing both the duration and the potential for future racketeering activity (open-endedness). The passage also notes that the Tenth Circuit continues to use a multi-factor test that was applied before the H.J. Inc. decision, indicating a nuanced approach to determining continuity.

[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 ... See H.J. Inc., 492 U.S. at 242 (suggesting open-ended continuity can be satisfied by showing likelihood of predicate acts continuing into the future or by showing that predicate acts occur in normal course of entity's business); ... Howard v. Am. Online Inc., 208 F.3d 741,746 (2000) (holding the term 'pattern' requires a showing of relationship and continuity); ... 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**

The passage provides definitions and examples of both closed-ended and open-ended continuity, which are essential components of establishing a "pattern of racketeering activity" under RICO. Closed-ended continuity involves a series of related predicates over a substantial period, while open-ended continuity involves conduct that poses a threat of continuing into the future. These definitions are crucial for understanding the legal standards for RICO claims, including in the 10th Circuit.

[Racketeer influenced and corrupt organizations.](#)

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

## **Extract**

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

## **Summary**

Clear definition of both closed-ended and open-ended continuity, which are essential components of establishing a pattern of racketeering activity under RICO. Closed-ended continuity requires a series of related predicates over a substantial period, while open-ended continuity involves conduct that threatens to continue into the future. This understanding is crucial for evaluating RICO claims in any circuit, including the Tenth Circuit.

[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 is defined as 'a series of related predicates extending over a substantial period of time.' Open-ended continuity is defined as conduct that may last only a short period of time but nonetheless, poses a threat of extending into the future. 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 Seventh and Tenth Circuits, while facially employing the H.J. Inc. test and considering duration and open-endedness of the racketeering activity, continue to use the multi-factor test applied prior to H.J. Inc.

## **Summary**

The passage provides insight into the legal standards for RICO civil claims in the Tenth Circuit by explaining the concepts of closed-ended and open-ended continuity. Closed-ended continuity involves a series of related predicates over a substantial period, while open-ended continuity involves conduct that poses a future threat. The Tenth Circuit uses the H.J. Inc. test but also considers a multi-factor test from before H.J. Inc., indicating a nuanced approach to determining continuity.

[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. The Seventh and Tenth Circuits, while facially employing the H.J. Inc. test and considering duration and open-endedness of the racketeering activity...

## **Summary**

Clear explanation of the continuity requirement for RICO claims, distinguishing between closed-ended and open-ended continuity. It highlights that the Tenth Circuit, along with the Seventh Circuit, applies the

H.J. Inc. test, which involves considering the duration and potential for future racketeering activity. This is relevant to understanding the legal standards in the Tenth Circuit for RICO claims.

[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. The Seventh and Tenth Circuits employ the H.J. Inc. test and consider duration and open-endedness of the racketeering activity, but cling to the multi-factor test applied prior to H.J. Inc.

## **Summary**

The passage provides insight into how the Tenth Circuit approaches the continuity requirement for RICO claims. It highlights that the Tenth Circuit uses the H.J. Inc. test, which considers both the duration and the open-endedness of the racketeering activity. The passage also notes that the Tenth Circuit continues to use a multi-factor test that was applied before the H.J. Inc. decision, indicating a nuanced approach to determining continuity.

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

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

## **Extract**

The Court outlined two separate ways of establishing continuity: (1) closed-ended continuity--'a closed period of repeated conduct;' and (2) open-ended continuity--'past conduct that by its nature projects into the future with a threat of repetition.' Continuity could be established by proving that either closed-ended continuity or open-ended continuity was present. Continuity, in both cases, the Court stated, was 'centrally a temporal concept.' Closed-ended continuity may be proven by demonstrating 'a series of related predicates extending over a substantial period of time.' The Court declared that '[p]redicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement,' because

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

## **Summary**

Criteria for both types of continuity, which are essential for establishing a pattern of racketeering activity under RICO. This information is applicable to RICO claims in general, including those in the 10th Circuit.

### [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.” Closed-ended continuity may be demonstrated with proof of “a series of related predicates extending over a substantial period of time.” *Id.* at 242 (“Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement: Congress was concerned in RICO with long-term criminal conduct.”). Open-ended continuity, in contrast, requires proof of “a threat of continued racketeering activity.” *Id.* at 242.

## **Summary**

Detailed explanation of the concepts of closed-ended and open-ended continuity as they relate to RICO claims. Closed-ended continuity requires a series of related predicate acts over a substantial period, while open-ended continuity involves a threat of continued racketeering activity. This information is crucial for understanding the legal standards for RICO claims, including in the 10th Circuit.

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

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

### **Extract**

A violation of § 1962(c), the section on which Sedima relies, requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. The plaintiff must allege each of the elements to state a claim. They are all equally essential components, and the complaint will fail if any one of them is not adequately pleaded. In particular, RICO claims based on mail or wire fraud must comport with Federal Rule of Civil Procedure 9(b)'s requirement that allegations involving fraud be pleaded with particularity. ... There has been substantial litigation regarding what constitutes a "pattern" of racketeering activity, what an "enterprise" can consist of, and what must be alleged to plead and prove "conduct" of same through a pattern of racketeering activity. ... The most prominently litigated subsection of § 1962 is § 1962(c). A plaintiff only has standing to sue if they have been injured in their business or property by conduct constituting the violation. To establish a § 1962(c) RICO claim, the following elements must be proven: • Enterprise: A structured group of individuals associated for a common purpose. • Pattern of racketeering activity: At least two acts of racketeering, as specified within the statute, within 10 years. • Conduct: Directly or indirectly conducting the enterprise's affairs through racketeering. • Injury: An injury to business or property due to the racketeering activity.

### **Summary**

Detailed explanation of the elements required to establish a civil RICO claim under § 1962(c), which includes conduct, enterprise, pattern of racketeering activity, and injury. It also highlights the necessity of pleading fraud with particularity when mail or wire fraud is involved. The passage does not specifically address the Tenth Circuit or the requirements for open-ended versus closed-ended continuity, but it does provide a foundational understanding of the general legal standards for RICO civil claims.

### [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

Clear explanation of the continuity requirement for RICO civil claims, which is crucial for establishing a "pattern of racketeering activity." It distinguishes between closed-ended continuity, which involves a series of related predicate acts over a substantial period, and open-ended continuity, which involves a threat of ongoing criminal activity. This information is applicable to understanding the legal standards for RICO claims, including in the 10th Circuit.

### [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: \* 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 legal standards for RICO civil claims require demonstrating a pattern of racketeering activity. This can be shown through either closed-ended continuity, which involves a series of related predicate acts over a substantial period, or open-ended continuity, which involves a threat of ongoing criminal activity into the future. These standards are applicable to civil RICO claims generally, including those in the 10th Circuit.

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