

Question

Plaintiff alleged that after the initial acts (wire fraud, Travel Act violation), Defendants continued to communicate, threaten, and interfere with Plaintiff's legal and business affairs, including taunting messages and ongoing coordination regarding the divorce and litigation. Open-ended continuity exists where the predicate acts pose a threat of continued criminal activity, such as when the acts are part of the regular way of conducting business or where there is an implicit or explicit threat of repetition. (H.J. Inc., 492 U.S. at 242-43; Johnson v. Heath, 56 F.4th at 859-60). The district court erred by characterizing the ongoing communications and threats as unrelated to the original scheme, rather than as evidence of a continuing threat or as acts in furtherance of the enterprise's objectives. The court's approach is inconsistent with Supreme Court and Tenth Circuit precedent, which require a fact-specific inquiry into whether the acts, taken together, pose a threat of continued racketeering activity.

Answer (Tenth Circuit)

Short response

The district court erred in dismissing the ongoing communications, threats, and interference as unrelated to the original racketeering scheme; Supreme Court and Tenth Circuit precedent require a fact-specific inquiry into whether such acts, taken together, pose a threat of continued racketeering activity and may establish open-ended continuity under RICO. Ongoing conduct that furthers the enterprise's objectives or poses a threat of repetition can satisfy the continuity requirement, and the court's approach was inconsistent with controlling authority.

Summary

Under both Supreme Court and Tenth Circuit law, the RICO "pattern" requirement demands not only multiple predicate acts but also a showing of "continuity plus relationship." Continuity can be established through either a closed period of repeated conduct or, as relevant here, open-ended continuity—where the predicate acts pose a threat of continued criminal activity, such as when ongoing communications, threats, or interference are part of the regular way of conducting business or suggest an implicit or explicit threat of repetition.

The district court's failure to consider the ongoing acts as evidence of a continuing threat or as acts in furtherance of the enterprise's objectives was inconsistent with binding precedent. Both the Supreme Court and the Tenth Circuit have emphasized that the existence of a threat of continued racketeering activity is a fact-specific inquiry, and ongoing conduct related to the enterprise's affairs may satisfy the open-ended continuity

requirement. The court should have considered the totality of the circumstances, including the ongoing communications and threats, in determining whether the pattern requirement was met.

Background and Relevant Law

Statutory Framework

The Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961–1968, prohibits conducting an enterprise’s affairs through a pattern of racketeering activity. A “pattern” requires at least two predicate acts of racketeering activity within ten years, but the Supreme Court has made clear that two acts alone are not sufficient; there must also be a relationship between the acts and a threat of continued criminal activity (*H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229 (1989); [Johnson v. Heath](#), 56 F.4th 851, 859-60 (10th Cir. 2022)).

Case Law

Supreme Court and Tenth Circuit Precedent

The Supreme Court in *H.J. Inc.* established that a RICO “pattern” requires both “relationship” and “continuity.” Relationship is shown when predicate acts have similar purposes, results, participants, victims, or methods, or are otherwise interrelated and not isolated. Continuity, the focus here, can be either closed-ended (a series of related predicates over a substantial period) or open-ended (conduct that poses a threat of continuing into the future) (*H.J. Inc.*, 492 U.S. at 239-43).

The Tenth Circuit has consistently followed this framework, emphasizing that continuity may be established by showing that the predicate acts themselves involve a distinct threat of long-term racketeering activity, either implicit or explicit, or that the acts are part of the regular way of conducting the enterprise’s business ([Johnson v. Heath](#), 56 F.4th at 859-60; [Bixler v. Foster](#), 596 F.3d 751, 761 (10th Cir. 2010); [Resolution Trust Corp. v. Stone](#), 998 F.2d 1534, 1543 (10th Cir. 1993)).

Open-ended continuity is particularly relevant where the acts, even if occurring over a short period, pose a threat of repetition or are part of an ongoing scheme without a single, finite objective ([Edwards v. First Nat. Bank, Bartlesville, Oklahoma](#), 872 F.2d 347, 351 (10th Cir. 1989); [Condict v. Condict](#), 826 F.2d 923, 927 (10th Cir. 1987)). The Tenth Circuit has also stressed that the inquiry is fact-specific and must consider the totality of the circumstances ([Fisher Sand & Gravel Co. v. FNF Constr., Inc., No. 10-cv-0635 RB/SMV](#) (D. N.M. Mar 27, 2013); [U.S. v. Smith](#), 413 F.3d 1253, 1266 (10th Cir. 2005)).

Secondary Materials

Secondary authorities reinforce that continuity can be established by showing that the predicate acts are part of the regular way of conducting business or that there is a threat of continued criminal activity, and that the acts need not be identical but must be related to the enterprise's affairs (RICO: A Primer (2022); [Racketeer influenced and corrupt organizations](#). (2011)).

Analysis

The Continuity Requirement: Open-Ended Continuity

The central issue is whether the ongoing communications, threats, and interference following the initial predicate acts (wire fraud, Travel Act violation) can satisfy the open-ended continuity requirement for a RICO pattern. Under *H.J. Inc. and its progeny*, open-ended continuity exists where the predicate acts pose a threat of continued criminal activity. This can be shown in several ways:

1. **Explicit or Implicit Threat of Repetition:** If the acts themselves include a specific threat of repetition extending indefinitely into the future, this supplies the requisite threat of continuity (*H.J. Inc.*, 492 U.S. at 242-43; [Johnson v. Heath](#), 56 F.4th at 859-60; [Chapter 4. Elements of Cause of Action](#)).
2. **Regular Way of Conducting Business:** If the predicate acts are part of the regular way the enterprise conducts its business, continuity is established ([Watchous Enterprises, LLC v. Pac. Nat'l Capital, LLC](#), Case No. 16-1432-JTM (D. Kan. Jul 25, 2018); [Resolution Trust Corp. v. Stone](#), 998 F.2d at 1543).
3. **Long-Term Association for Criminal Purposes:** If the acts can be attributed to a defendant operating as part of a long-term association that exists for criminal purposes, continuity is also satisfied ([Chapter 4. Elements of Cause of Action](#)).

The Tenth Circuit has repeatedly held that the continuity requirement is not met by isolated or sporadic acts, or by a scheme with a single, discrete objective that ends when the goal is achieved ([Pitts v. Turner and Boisseau Chartered](#), 850 F.2d 650, 652 (10th Cir. 1988); [Condict v. Condict](#), 826 F.2d at 927). However, where the scheme is ongoing, lacks a finite endpoint, or contemplates future criminal conduct, open-ended continuity may be established ([Edwards v. First Nat. Bank](#), 872 F.2d at 351).

Application to Ongoing Communications, Threats, and Interference

The plaintiff's allegations—that after the initial predicate acts, defendants continued to communicate, threaten, and interfere with the plaintiff's legal and business affairs, including taunting messages and ongoing coordination

regarding divorce and litigation—are precisely the type of conduct that may evidence open-ended continuity under the controlling authorities.

1. **Relationship to the Enterprise’s Objectives:** The ongoing acts are not isolated or unrelated; rather, they are alleged to be in furtherance of the enterprise’s objectives, such as intimidating the plaintiff, interfering with legal and business affairs, and perpetuating the scheme. This satisfies the “relationship” prong ([Schrag v. Dinges, 788 F.Supp. 1543, 1550 \(D. Kan. 1992\)](#); RICO: A Primer (2022)).
2. **Threat of Continued Criminal Activity:** The ongoing communications and threats, especially if they are part of a pattern of interference and intimidation, may constitute an implicit or explicit threat of repetition. If the enterprise’s conduct is ongoing and not limited to a single, completed objective, this supports a finding of open-ended continuity ([Nation v. Shah, 4:19-cv-00588-JDR-JFJ \(N.D. Okla. Oct 30, 2024\)](#); [Fisher Sand & Gravel Co. v. FNF Constr., Inc.](#)).
3. **Fact-Specific Inquiry Required:** Both the Supreme Court and the Tenth Circuit have emphasized that whether continuity exists is a fact-specific inquiry, requiring consideration of the totality of the circumstances. The district court’s categorical dismissal of the ongoing acts as unrelated to the original scheme is inconsistent with this requirement (H.J. Inc., 492 U.S. at 242; [Johnson v. Heath, 56 F.4th at 859-60](#); [U.S. v. Smith, 413 F.3d at 1266](#)).
4. **Regular Way of Conducting Business:** If the ongoing acts are part of the regular way the enterprise operates—such as using threats and interference to achieve its goals—this further supports a finding of open-ended continuity ([Watchous Enterprises, LLC v. Pac. Nat’l Capital, LLC](#); [Gotfredson v. Larsen Lp, 432 F.Supp.2d 1163, 1177 \(D. Colo. 2006\)](#)).

The District Court’s Error

The district court’s approach—treating the ongoing communications and threats as unrelated to the original scheme—contravenes the requirement for a fact-specific inquiry and the broad, flexible approach to continuity mandated by the Supreme Court and Tenth Circuit. The court should have considered whether the ongoing acts, in context, posed a threat of continued racketeering activity or were part of the regular way the enterprise conducted its affairs ([Nation v. Shah, 4:19-cv-00588-JDR-JFJ \(N.D. Okla. Oct 30, 2024\)](#); [Johnson v. Heath, 56 F.4th at 859-60](#)).

Subsequent/Negative Treatment of Authorities

It is important to note that [U.S. v. Smith, 413 F.3d 1253 \(10th Cir. 2005\)](#) was stated as overruled by *United States v. Nissen*, 555 F.Supp.3d 1174 (D. N.M. 2021). However, the relevant portions of *Smith* cited here—regarding the fact-specific nature of the continuity inquiry and the distinction between closed- and open-ended continuity—remain consistent with Supreme Court and Tenth Circuit precedent and are supported by other authorities cited

above. Similarly, [Condict v. Condict, 815 F.2d 579 \(10th Cir. 1987\)](#) was stated as superseded by a New Mexico Supreme Court case, but the relevant discussion of continuity is echoed in later Tenth Circuit and Supreme Court cases, so its persuasive value on this point remains intact.

Exceptions and Caveats

While ongoing acts may establish open-ended continuity, courts have cautioned that a scheme with a single, discrete objective that ends when the goal is achieved does not, by itself, create a threat of ongoing activity. There must be evidence that the scheme is not isolated or that it contemplates future criminal conduct ([Pitts v. Turner and Boisseau Chartered, 850 F.2d at 652](#); [Condict v. Condict, 826 F.2d at 927](#)). The inquiry is highly fact-specific, and the plaintiff must plausibly allege that the ongoing acts are related to the enterprise's affairs and pose a threat of continued racketeering activity ([Fisher Sand & Gravel Co. v. FNF Constr., Inc.](#)).

Conclusion

In sum, the district court erred by failing to consider the ongoing communications, threats, and interference as potential evidence of open-ended continuity under RICO. Supreme Court and Tenth Circuit precedent require a fact-specific inquiry into whether such acts, taken together, pose a threat of continued racketeering activity or are part of the regular way the enterprise conducts its affairs. The ongoing acts alleged by the plaintiff could satisfy the continuity requirement, and the court's categorical dismissal of these acts as unrelated to the original scheme was inconsistent with controlling law. The totality of the circumstances must be considered to determine whether the pattern requirement is met.

Legal Authorities

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

U.S. District Court — District of New Mexico

Extract

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

Summary

Concept of open-ended continuity in the context of RICO claims, emphasizing that it depends heavily on the facts of the case and the totality of the circumstances. It supports the idea that ongoing communications and threats can be considered part of a pattern of racketeering activity if they pose a threat of continued criminal activity. This aligns with the proposition that the district court erred by not considering the ongoing acts as evidence of a continuing threat.

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

U.S. Court of Appeals — Tenth Circuit

Extract

Only the continuity prong of the pattern element is at issue in this case. '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. See *id.* at 241, 109 S.Ct. at 2902; *Phelps v. Wichita Eagle-Beacon*, 886 F.2d 1262, 1273 (10th Cir.1989). 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. *H.J. Inc.*, 492 U.S. at 242, 109 S.Ct. at 2902; *Phelps*, 886 F.2d at 1273. Predicate acts extending over a few weeks or months are insufficient to show closed-ended continuity. *H.J. Inc.*, 492 U.S. at 242, 109 S.Ct. at 2902. 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. *Id.* at 242-43, 109 S.Ct. at 2902.

Summary

Concept of continuity in RICO cases, distinguishing between closed-ended and open-ended continuity. It explains that open-ended continuity can be established by showing a threat of long-term racketeering activity or that the predicates are a regular way of conducting business. This directly supports the proposition that ongoing communications and threats can be seen as evidence of a continuing threat or acts in furtherance of the enterprise's objectives, aligning with the requirement for a fact-specific inquiry into whether the acts pose a threat of continued racketeering activity.

[U.S. v. Smith, 413 F.3d 1253 \(10th Cir. 2005\)](#)

U.S. Court of Appeals — Tenth Circuit

Extract

Predicate acts must also 'amount to or pose a threat of continued criminal activity' in order to establish a pattern of racketeering activity. H.J., 492 U.S. at 239, 109 S.Ct. 2893. '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. Id. at 241, 109 S.Ct. 2893. Proving continuity may be done in several ways; there is no bright-line rule. Id. Indeed, whether this requirement is met 'depends on the specific facts of each case.' Id. at 242, 109 S.Ct. 2893.

Summary

Concept of continuity in the context of racketeering activity, emphasizing that continuity can be either closed-ended or open-ended. It highlights that proving continuity is fact-specific and does not follow a strict rule, aligning with the proposition that ongoing communications and threats can be seen as part of a continuing threat or acts in furtherance of an enterprise's objectives. This supports the argument that the district court should have considered the ongoing acts as evidence of a continuing threat.

[Luttrell v. Brannon, Case No. 17-2137-JWL \(D. Kan. Jun 19, 2018\)](#)

U.S. District Court — District of Kansas

Extract

Both Section 1962(c) and Section 1962(a) require a showing of a pattern of racketeering activity, consisting of at least two predicate acts. See 18 U.S.C. §§ 1961(5), 1962(a), (c). In order to satisfy this requirement, there must be both a relationship between the predicate acts and some element of continuity. See H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 239 (1989). The Supreme Court has explained the continuity requirement as follows: 'Continuity' is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition. It is, in either case, centrally a temporal concept---and particularly so in the RICO context, where what must be continuous, and the relationship these predicates must bear one to another, are distinct...

Summary

Requirement of continuity in RICO cases, referencing the Supreme Court's explanation in H.J. Inc. v. Northwestern Bell Tel. Co. It highlights that continuity can be open-ended, involving a threat of future violations, which aligns with the proposition that ongoing communications and threats can be seen as evidence of a continuing threat. This supports the argument that the district court erred by not considering these acts as part of a continuous pattern of racketeering activity.

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

U.S. District Court — District of New Mexico

Extract

The Supreme Court and the United States Court of Appeals for the Tenth Circuit have held that merely showing two acts of racketeering within the requisite ten-year period is not sufficient to show an actual pattern of racketeering activity. '[T]he statement that a pattern 'requires at least' two predicates implies 'that while two acts are necessary, they may not be sufficient.' H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 237, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989). Rather, based upon RICO's legislative history and the ordinary usage of the word 'pattern,' a pattern of racketeering activity 'requires the showing of a relationship between the predicates' and 'the threat of continuing activity.' H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. at 239, 109 S.Ct. 2893 (citation and internal quotation marks omitted). As the Tenth Circuit has explained, both elements must be present. Even if the racketeering activities are part of a common scheme, there is no showing of a RICO claim if the plaintiff has 'failed to show that they pose a threat of continuing criminal activity.' Duran v. Carris, 238 F.3d 1268, 1271 (10th Cir.2001).

Summary

The Tenth Circuit requires both a relationship between predicate acts and a threat of continuing activity to establish a pattern of racketeering. This aligns with the proposition that ongoing communications and threats can be seen as evidence of a continuing threat or acts in furtherance of an enterprise's objectives. The passage supports the idea that the district court erred by not considering the ongoing acts as part of a continuing threat, consistent with Supreme Court and Tenth Circuit precedent.

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

U.S. Court of Appeals — Tenth Circuit

Extract

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

Summary

The passage from "Duran v. Carris" highlights the necessity of demonstrating both a relationship between predicate acts and a threat of continuing activity to establish a RICO pattern. This aligns with the proposition that ongoing communications and threats can be part of a continuing threat or acts in furtherance of an enterprise's objectives. The passage supports the idea that the district court should have considered whether the acts posed a threat of continued racketeering activity, consistent with Supreme Court and Tenth Circuit precedent.

[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

Requirements for a RICO claim, emphasizing the need for a pattern of racketeering activity, which includes demonstrating both continuity and relationship among predicate acts. The passage specifically highlights that continuity can be open-ended, referring to conduct that projects into the

future with a threat of repetition. This supports the proposition that ongoing communications and threats can be seen as part of a continuing threat or acts in furtherance of the enterprise's objectives, consistent with the Supreme Court and Tenth Circuit precedent.

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

U.S. Court of Appeals — Tenth Circuit

Extract

The Supreme Court has attempted to provide some guidance—though whether that guidance provides any more clarity than the statute is subject to dispute. See *H.J. Inc.*, 492 U.S. at 252, 109 S.Ct. 2893 (Scalia, J., concurring) (“I doubt that the lower courts will find the Court’s instructions much more helpful than telling them to look for a ‘pattern’—which is what the statute already says.”). According to the Supreme Court, a RICO pattern requires that the racketeering predicates relate to each other and amount to a threat of continued racketeering activity. *Id.* at 239, 109 S.Ct. 2893. No pattern exists without this “continuity plus relationship.” *Id.* (emphasis omitted). ... 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

The passage from "*Johnson v. Heath*" discusses the requirements for establishing a RICO pattern, emphasizing the need for "continuity plus relationship" among predicate acts. It explains that open-ended continuity can be shown through acts that pose a threat of future repetition, are part of a criminal association, or are the regular way of conducting business. This directly supports the proposition that ongoing communications and threats can be seen as evidence of a continuing threat or acts in furtherance of an enterprise's objectives, aligning with the Supreme Court and Tenth Circuit precedent.

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

U.S. Court of Appeals — Tenth Circuit

Extract

A violation of section 1962(c) thus 'requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985). RICO defines racketeering activity as, inter alia, any act that is indictable under 18 U.S.C. Sec. 1341 (mail fraud) or 18 U.S.C. Sec. 1343 (wire fraud). See 18 U.S.C. Sec. 1961(1)(B). RICO also states that a ' "pattern of racketeering activity" requires at least two acts of racketeering activity.' 18 U.S.C. Sec. 1961(5). ... [T]o establish a RICO pattern, a plaintiff must also demonstrate continuity, that is, 'the threat of continuing activity.' *Sedima*, 105 S.Ct. at 3285 n. 14. This element is derived from RICO's legislative history, which indicates that RICO does not apply to 'sporadic activity' or to the 'isolated offender'. *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

Requirements for establishing a RICO violation, emphasizing the need for a pattern of racketeering activity, which includes demonstrating continuity or the threat of ongoing illegal conduct. This aligns with the proposition that ongoing communications and threats can be part of a pattern of racketeering activity if they pose a threat of continued criminal activity. The passage supports the idea that the district court should have considered whether the ongoing acts were part of a continuing threat rather than isolated incidents.

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

U.S. Court of Appeals — Tenth Circuit

Extract

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. 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

Continuity requirement for establishing a RICO pattern, emphasizing that a plaintiff must demonstrate a threat of ongoing illegal conduct. It highlights that a scheme with a single discrete objective does not inherently pose a threat of ongoing activity unless there is additional evidence showing the scheme is not isolated. Importantly, it notes that an ongoing scheme with open-ended fraudulent activity can satisfy the continuity element, which aligns with the proposition that ongoing communications and threats can be evidence of a continuing threat or acts in furtherance of an enterprise's objectives.

[Skurkey v. Daniel](#)

U.S. District Court — Western District of Oklahoma

Extract

Defendants next argue the Complaint fails to allege a “pattern of racketeering.” 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.”

Summary

Requirements for establishing a "pattern of racketeering" under RICO, emphasizing the need for predicate acts to either amount to or constitute a threat of continuing racketeering activity. This aligns with the proposition's assertion that ongoing communications and threats can be seen as evidence of a continuing threat, supporting the idea of open-ended continuity. The reference to *H.J. Inc. v. Northwestern Bell Telephone Co.* further supports the proposition by highlighting the importance of continuity and relationship in determining a pattern of racketeering.

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

U.S. Court of Appeals — Tenth Circuit

Extract

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.

Summary

Requirement of continuity in RICO claims, emphasizing that a single scheme with a discrete objective does not inherently demonstrate continuity unless there is evidence of ongoing illegal conduct or a threat thereof. It highlights that an ongoing scheme without a single endpoint can satisfy the continuity requirement, which aligns with the proposition that ongoing communications and threats can be part of a continuing threat or acts in furtherance of an enterprise's objectives.

[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."

Summary

The concept of "continuity" in RICO cases can be established through open-ended continuity, which involves acts that pose a threat of continued criminal activity. This aligns with the proposition that ongoing communications and threats can be seen as evidence of a continuing threat or acts in furtherance of the enterprise's objectives. The passage supports the idea that the district court should consider whether the acts, taken together, pose a threat of continued racketeering activity, consistent with Supreme Court and Tenth Circuit precedent.

[UMB Bank v. Monson, 21-CV-2504-EFM \(D. Kan. Jun 04, 2025\)](#)

U.S. District Court — District of Kansas

Extract

To state a "pattern" of racketeering activity, the plaintiff must allege "at least two acts of racketeering activity. .. which occurred within ten years."[] Moreover, "a RICO pattern requires that the racketeering predicates relate to each other and amount to a threat of continued racketeering activity. No pattern exists without this 'continuity plus relationship.'"[] ... Next, the Court turns to the continuity requirement. Under this prong, a plaintiff must allege that the acts amounted to or threaten continued racketeering activity. [] This standard is more difficult to meet than the relationship standard.[] Either "open-ended" or "closed-ended" continuity can satisfy the continuity prong.

Summary

Requirements for establishing a "pattern" of racketeering activity under RICO, emphasizing the need for continuity and relationship among predicate acts. It highlights that continuity can be either open-ended or closed-ended, and that a threat of continued racketeering activity is necessary. This aligns with the proposition that ongoing communications and threats can be seen as evidence of a continuing threat or acts in furtherance of an enterprise's objectives, supporting the argument that the district court erred in its characterization.

[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 Supreme Court's interpretation of RICO's pattern requirement involves both continuity and relationship. The passage explains that continuity can be demonstrated through either a closed period of repeated conduct or an open-ended threat of future repetition. This aligns with the proposition that ongoing communications and threats can be seen as part of a continuing threat or as acts in furtherance of the enterprise's objectives, thus supporting the argument that the district court erred in its characterization.

[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.

Summary

Concept of open-ended continuity in the context of RICO claims, which is directly relevant to the proposition. It explains that open-ended continuity can be established by demonstrating a threat of long-term racketeering activity or that the predicate acts are a regular way of conducting business. This aligns with the proposition's assertion that the district court erred by not recognizing the ongoing communications and threats as evidence of a continuing threat or acts in furtherance of the enterprise's objectives.

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

U.S. Court of Appeals — Tenth Circuit

Extract

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

Continuity requirement in RICO cases, specifically addressing situations where a scheme involves ongoing fraudulent activity without a single goal that concludes the activity. This aligns with the proposition that ongoing communications and threats can be part of a continuing threat or acts in furtherance of an enterprise's objectives. The passage supports the idea that such ongoing schemes can satisfy the continuity element of a RICO pattern, which is relevant to the proposition's argument about the district court's error in characterizing the ongoing acts as unrelated.

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

U.S. District Court — District of Kansas

Extract

A pattern of activity under the RICO statute means 'a series of related predicates that together demonstrate the existence or threat of continued criminal activity.' *RJR Nabsico v. European Community*, 136 S.Ct. 2090, 2096 (2016). This threat of continuity may be shown by demonstrating that 'the predicate acts or offenses are part of an ongoing entity's regular way of doing business.' *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 249 (1989). Demonstrating the existence of a pattern of racketeering activity may be satisfied by proof of prior acts with '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.' *Bixler v. Foster*, 596 F.3d 751, 761 (10th Cir. 2010).

Summary

The passage provides a legal framework for establishing a pattern of racketeering activity under the RICO statute. It emphasizes that a pattern

can be demonstrated by showing related predicate acts that pose a threat of continued criminal activity, particularly when these acts are part of an entity's regular business practices. This aligns with the proposition that ongoing communications and threats can be seen as part of a continuing threat or as acts in furtherance of an enterprise's objectives, thus supporting the argument that the district court erred in its characterization.

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

U.S. District Court — Western District of Oklahoma

Extract

'[T]o satisfy RICO's pattern requirement, [a plaintiff must] allege not only that the defendants had committed two or more predicate acts, but also that the predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity.' *Bixler v. Foster*, 596 F.3d 751, 761 (10th Cir.2010) (quoting *Hall v. Witteman*, 584 F.3d 859, 867 (10th Cir. 2009)) (emphasis in original). 'The term pattern itself requires the showing of a relationship between the predicates and of the threat of continuing activity,' so that it is 'continuity plus relationship which combines to produce a pattern.' *United States v. Knight*, 659 F.3d 1285, 1288-89 (10th Cir.2011) (quoting *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989)) (emphasis in original).

Summary

Requirements for establishing a pattern of racketeering activity under RICO, emphasizing the need for a relationship between predicate acts and a threat of continuing activity. This aligns with the proposition that ongoing communications and threats can be seen as part of a continuing threat or acts in furtherance of an enterprise's objectives. The passage supports the idea that the district court should have considered the ongoing acts as evidence of a continuing threat, consistent with Tenth Circuit precedent.

[Sensoria, LLC v. Kaweske, 581 F.Supp.3d 1243 \(D. Colo. 2022\)](#)

U.S. District Court — District of Colorado

Extract

To establish the 'pattern' element, a plaintiff not only must show multiple predicate acts, 'but also that the predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity.' *Bixler*, 596 F.3d at 761 (internal citation omitted) (emphasis in the original). This element reflects Congress' concern over long-term criminal activity. *Boone v. Carlsbad Bancorporation, Inc.*, 972 F.2d 1545, 1556 (10th Cir. 1992).

Summary

The passage highlights the necessity of demonstrating that predicate acts not only occur but also pose a threat of continued racketeering activity to establish a RICO pattern. This aligns with the proposition that ongoing communications and threats can be seen as evidence of a continuing threat or acts in furtherance of an enterprise's objectives. The passage supports the idea that the district court should have considered whether the acts, taken together, posed a threat of continued racketeering activity, consistent with Tenth Circuit precedent.

[Racketeer influenced and corrupt organizations.](#)

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

Extract

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

Summary

The Supreme Court in *H.J., Inc. v. Northwestern Bell Telephone Co.* clarified the need for both relationship and continuity in proving a pattern of racketeering activity under RICO. The Court emphasized that continuity can be shown through either past repeated conduct or an open-ended threat of continued criminal activity. This aligns with the proposition that ongoing communications and threats can be seen as evidence of a continuing threat or acts in furtherance of the enterprise's objectives.

[Racketeer influenced and corrupt organizations.](#)

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

Extract

threat of extending into the future. (55) The Court suggested a case-by-case examination of this issue, noting that the existence of a 'threat of continued

racketeering activity' is a function of particular facts. (56) The Court offered a non-exhaustive list of situations that may constitute a pattern, (57) and stated 'development of these concepts must await future cases.' (58)... (55.) 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)...

Summary

Concept of open-ended continuity in the context of RICO violations, as established in H.J. Inc. v. Northwestern Bell Telephone Co. It emphasizes that open-ended continuity can be demonstrated by showing a likelihood of predicate acts continuing into the future or occurring as part of the regular business operations of an entity. This aligns with the proposition that ongoing communications and threats can be seen as evidence of a continuing threat or acts in furtherance of an enterprise's objectives, thus supporting the argument that the district court erred in its characterization.

[Racketeer influenced and corrupt organizations.](#)

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

Extract

The Supreme Court reversed the Eighth Circuit's decision, holding that in order to prove a 'pattern of racketeering activity,' a plaintiff or prosecutor must show both 'relationship' and 'continuity' as separate elements. However, the Court recognized that these factors will often overlap. The relationship prong is defined by the connection of the defendant's criminal acts to one another. As the Court wrote: '[c]riminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.' 'Continuity' is successfully proved if a plaintiff can show actual continuity or the threat of continuity of racketeering activity. The Court seemed to propose a case-by-case examination of this issue by noting that the existence of a 'threat of continued racketeering activity' is a function of the particular facts.

Summary

The Supreme Court's decision in H.J. Inc. emphasizes the need to demonstrate both "relationship" and "continuity" to establish a pattern of racketeering activity. The Court's recognition that these factors often overlap and its emphasis on a case-by-case examination of the threat of continued racketeering activity support the proposition that ongoing communications and threats can be seen as part of a continuing threat or acts in furtherance of an enterprise's objectives.

[Racketeer influenced and corrupt organizations.](#)

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

Extract

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

Summary

Concept of continuity in the context of RICO, explaining that continuity can be either closed-ended or open-ended. Open-ended continuity is particularly relevant to the proposition as it involves conduct that poses a threat of continuing into the future, which aligns with the Plaintiff's allegations of ongoing threats and interference. The passage also emphasizes the need for a case-by-case examination to determine the existence of a threat of continued racketeering activity, which supports the argument that the district court should have considered the ongoing acts as part of a continuing threat.

[Racketeer influenced and corrupt organizations.](#)

American Criminal Law Review - Georgetown University Law Center - Douglass, Sean M. - 2011-03-22

Extract

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

Summary

Concept of continuity in the context of RICO, specifically addressing both closed-ended and open-ended continuity. It highlights that open-ended continuity can be established by showing a threat of future criminal activity, which aligns with the proposition that ongoing communications and threats can be seen as evidence of a continuing threat. The reference to H.J. Inc. supports the idea that a fact-specific inquiry is necessary to determine the threat of continued racketeering activity.

[Racketeer influenced and corrupt organizations.](#)

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

Extract

In H.J. Inc. v. Northwestern Bell Telephone Co., (46) the Court held that the government must establish both a relationship between the predicate acts and continuity of those acts to prove a 'pattern of racketeering activity' for RICO purposes. (47) These requirements, referred to as the 'continuity plus relationship' test, (48) must be proven independently, but the Court has recognized that evidence establishing the two elements will often overlap. (49)... The 'continuity' component is met by either closed-ended continuity, defined as 'a series of related predicates extending over a substantial period of time,' (52) or open-ended continuity, defined as conduct that poses a threat of extending into the future. (53) The Court suggested a case-by-case examination of this issue, noting that the existence of a 'threat of continued racketeering activity' is a function of particular facts. (54)

Summary

Supreme Court's interpretation of the "continuity plus relationship" test for establishing a pattern of racketeering activity under RICO. It highlights the need for both a relationship between predicate acts and continuity, which can be open-ended if there is a threat of future criminal activity. This directly supports the proposition that ongoing communications and threats can be seen as evidence of a continuing threat or acts in furtherance of an enterprise's objectives, consistent with the Supreme Court's guidance.

[Racketeer influenced and corrupt organizations.](#)

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

Extract

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

Summary

Criteria for establishing a pattern of racketeering activity under RICO, emphasizing the importance of the relationship and continuity prongs. It highlights that criminal acts must be interrelated and not isolated, and continuity can be shown through a threat of future racketeering activity. This aligns with the proposition that ongoing communications and threats can be seen as part of a continuing threat or acts in furtherance of an enterprise's objectives.

[Racketeer influenced and corrupt organizations.](#)

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

Extract

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

Summary

The Supreme Court in *H.J. Inc. v. Northwestern Bell Telephone Co.* clarified the need to demonstrate both relationship and continuity to establish a pattern of racketeering activity. The passage supports the proposition by emphasizing that continuity can be shown through a threat of continued criminal activity, which aligns with the plaintiff's allegations of ongoing threats and interference. This interpretation is consistent with the need for a fact-specific inquiry into whether acts pose a threat of continued

racketeering activity, as required by Supreme Court and Tenth Circuit precedent.

[Racketeer influenced and corrupt organizations.](#)

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

Extract

In *H.J. Inc. v. Northwestern Bell Telephone Co.*, (45) the Court held that the government must establish both a relationship between the predicate acts and continuity of those acts to prove a 'pattern of racketeering activity' for RICO purposes. (46) These requirements, referred to as the 'continuity plus relationship' test, (47) must be proven independently, but the Court has recognized that evidence establishing the two elements will often overlap. (48)... The 'continuity' component is met by either closed-ended continuity, defined as 'a series of related predicates extending over a substantial period of time,' (51) or open-ended continuity, defined as conduct that poses a threat of extending into the future. (52) 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. (53)

Summary

The Supreme Court in *H.J. Inc.* established the "continuity plus relationship" test for proving a pattern of racketeering activity under RICO. This test requires showing both a relationship between predicate acts and continuity, which can be either closed-ended or open-ended. Open-ended continuity is particularly relevant to the proposition, as it involves conduct that poses a threat of extending into the future, aligning with the Plaintiff's allegations of ongoing threats and interference.

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

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

Extract

Open-ended continuity, in contrast, requires proof of 'a threat of continued racketeering activity.' *Id.* at 242. Under *H.J. Inc.*, open-ended continuity may be established in various ways. The Court furnished some examples. First, a small number of related predicates occurring close together in time will establish open-ended continuity if 'the racketeering acts themselves include a specific threat of repetition extending indefinitely into the future, and thus supply the requisite threat of continuity.' Second, the threat of continuity may be established with a 'showing that the predicate acts or offenses are

part of an ongoing entity's regular way of doing business.' Third, continuity is proved 'if the predicates can be attributed to a defendant operating as part of a long-term association that exists for criminal purposes.'

Summary

Open-ended continuity in RICO cases can be established by demonstrating a threat of continued racketeering activity. This can be shown if the predicate acts include a specific threat of repetition, are part of an ongoing entity's regular way of doing business, or are part of a long-term association for criminal purposes. These criteria align with the proposition that the defendants' ongoing actions could be seen as a continuation of the initial scheme, posing a threat of continued criminal activity.

[RICO: A Primer](#)

Extract

The racketeering acts need not be similar or directly related to each other; rather, it is sufficient that the racketeering acts are related in some way to the affairs of the charged enterprise, including, for example, that: the racketeering acts furthered the goals of or benefitted the enterprise, the enterprise or the defendant's role in the enterprise enabled the defendant to commit, or facilitated the commission of, the racketeering acts, the racketeering acts were committed at the behest of, or on behalf of, the enterprise, or the racketeering acts had the same or similar purposes, results, participants, victims or methods of commission. 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 that racketeering acts do not need to be directly related but must be connected to the enterprise's affairs. It also clarifies that continuity can be established if the acts are part of the regular way of conducting business or if there is a threat of ongoing criminal activity. This supports the proposition that the ongoing communications and threats could be seen as part of a pattern of racketeering activity, especially if they further the enterprise's goals or pose a threat of continued criminal activity.

Extract

The racketeering acts need not be similar or directly related to each other; rather, it is sufficient that the racketeering acts are related in some way to the affairs of the charged enterprise, including, for example, that: the racketeering acts furthered the goals of or benefitted the enterprise, the enterprise or the defendant's role in the enterprise enabled the defendant to commit, or facilitated the commission of, the racketeering acts, the racketeering acts were committed at the behest of, or on behalf of, the enterprise, or the racketeering acts had the same or similar purposes, results, participants, victims or methods of commission. 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 that racketeering acts do not need to be similar or directly related but must be related to the enterprise's affairs. It also clarifies that continuity can be established through a regular way of conducting business or by demonstrating a threat of continued criminal activity. This aligns with the proposition that ongoing communications and threats can be seen as part of a continuing threat or acts in furtherance of the enterprise's objectives, supporting the argument that the district court erred in its characterization.

This memo was compiled by Vincent AI based on vLex materials available as of September 05, 2025. [View full answer on vLex](#)