

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CHERYL AUCOIN, ET AL

CIVIL ACTION

VERSUS

NO. 09-3690

EXXON MOBIL CORP., ET AL

SECTION "N" (5)

ORDER AND REASONS

Presently before the Court are several motions for partial judgment, filed by Defendants, seeking dismissal of Plaintiffs' survival action claims based on untimeliness. See Rec. Docs. 199, 200, 201, 204, 208, 210, 211, 212, and 213. Specifically, all of the survival actions at issue were instituted more than one year after the death of the decedents. On that basis, Defendants urge that the actions are time-barred based on the notion that the one-year period applicable to survival actions, as set forth in Louisiana Civil Code article 2315.1, is preemptive, rather than prescriptive, such that it is not subject to interruption or suspension, particularly including *contra non valentum*. On the showing made, and for essentially the reasons set forth in *Barber v. Employers Ins. Co. of Wausau*, – So.3d –, 2012 WL 2454956, *4-5, 8-11 (La. App. 1 Cir. 6/28/12) and *Winningkoff v. American Cynamid*, Civil Action No. 99-3077, 2000 WL 235648, *7 and n. 20 (E.D. La.3/1/00)(McNamara, J.), **IT IS ORDERED** that the motions are **GRANTED** and that Plaintiffs' survival action claims, asserted pursuant to Louisiana Civil Code article 2315.1, are **DISMISSED WITH PREJUDICE**.

New Orleans, Louisiana, this 26th day of September 2012.



KURT D. ENGELHARDT
United States District Judge