

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

04-1485 consolidated with 04-1483, 04-1484, & 04-1486

W. GREGORY BAKER AND VIKKI L. BAIERS

VERSUS

**CHRIS VERRET, ED LARRY SIKES, STEPHANIE M. HIGGINBOTHAM,
DARNALL SIKES & FREDERICK (A CPA CORPORATION), LOUIS B.
VIVIANO, BCM, L.L.C., LAF FOODS, INC., GREG BAKER ENTERPRISES,
INC., CBC INTERNATIONAL, INC., XYZ INSURANCE CO., XYZ
INSURANCE CO.**

APPEAL FROM THE
FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF LAFAYETTE, NO. 980482
HONORABLE DURWOOD WAYNE CONQUE, DISTRICT JUDGE

**ULYSSES GENE THIBODEAUX
CHIEF JUDGE**

Court composed of Ulysses Gene Thibodeaux, Chief Judge, Jimmie C. Peters, and Marc T. Amy, Judges.

PETERS, J., DISSENTS AND ASSIGNS WRITTEN REASONS.

AMY, J., CONCURS FOR THE REASONS ASSIGNED IN *Glod v. Baker*, 04-1483 (La.App. 3 Cir. __/__/05), __ So.2d __.

AFFIRMED.

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William A. Copeland III, and Alvin C. Copeland, Jr.**

THIBODEAUX, Chief Judge.

For the reasons discussed in the consolidated case of *Glod v. Baker*, 04-1483 (La.App. 3 Cir. __/__/05), __ So.2d __, the judgment of the trial court is affirmed. Costs of the appeal are assessed to appellants, BCM, L.L.C. and Nawlins Cajun Foods, L.L.C.

AFFIRMED.

NUMBER 04-1485
CONSOLIDATED WITH 04-1483, 04-1484, & 04-1486

COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA

W. GREGORY BAKER AND VIKKI L. BAIERS

VERSUS

CHRIS VERRET, ED LARRY SIKES, STEPHANIE M. HIGGINBOTHAM,
DARNALL SIKES & FREDERICK (A CPA CORPORATION), LOUIS B.
VIVIANO, BCM, L.L.C., LAF FOODS, INC., GREG BAKER ENTERPRISES,
INC., CBC INTERNATIONAL, INC., XYZ INSURANCE CO., XYZ INSURANCE
CO.

PETERS, J., dissenting.

For the reasons discussed in my dissent in the consolidated case of *Glod v. Baker*, 04-1483 (La.App. 3 Cir. ___/___/05), ___ So.2d ___, I respectfully disagree with the majority's opinion in this matter. I would reverse the trial court's grant of the summary judgment and remand the matter for further proceedings.

NUMBER 04-1483
C/W 04-1484, 04-1485, 04-1486

COURT OF APPEAL, THIRD CIRCUIT

STATE OF LOUISIANA

WALTER A. GLOD, JR., M.D.

VERSUS

W. GREGORY BAKER, ET AL.

AMY, J., concurring.

I agree that an affirmation is required. With regard to claims allegedly arising under the Louisiana Fair Trade Practices Act, I find that they were either preempted or without merit and, therefore, subject to dismissal through summary judgment. Like the lead opinion, I find the continuing tort doctrine inapplicable as the limitation period at issue is one of preemption rather than prescription. Preemptive periods cannot be interrupted or suspended and application of the continuing tort doctrine to the period would do just that. Absent the continuing tort theory, each action must be viewed as individual and should be recognized as beginning its own preemptive period. Simply, as suit was filed on January 29, 1998, it was not timely as to any action occurring prior to January 29, 1997. Any actions occurring after that date do not constitute LUTPA violations and were, therefore, appropriate for summary judgment.