

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.