

04/13/2012 "See News Release 021 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

2011-CC-2254

GIBSLAND BANK AND TRUST COMPANY

vs.

**KITCHENS, BENTON, KITCHENS & BLACK (APLC),
MELANIE F. McCULLOUGH, and
FIRST MERCURY INSURANCE COMPANY**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
SECOND CIRCUIT, PARISH OF CADDO**

Johnson, J. dissents from the majority's ruling to grant with order for the same reasons assigned in her dissent in *Jenkins v. Starns*, 2011-1170 (La. 1/24/12) 2012 WL 206492, 17, 18:

[T]he continuous representation rule should be applied similarly to the "continuous treatment" rule in medical malpractice cases. The continuous treatment rule provides that prescription in a medical malpractice case is suspended as long as the defendant health care provider continuously treats the plaintiff in an effort to improve the plaintiff's condition allegedly caused by negligent treatment. *See Carter v. Haygood*, 04-0646 (La.1/19/05), 892 So.2d 1261. This Court has found the time periods in the medical malpractice act to be prescriptive, rather than preemptive. However, failure to apply the continuous representation rule in legal malpractice cases leads to absurd results.

As I stated in my dissent in *Reeder v. North*, 97-0239 (La.10/21/97), 701 So.2d 1291, "if a client is required to file suit against his attorney while the suit is being litigated and before a judgment is definitive, the client is placed in the untenable position of asserting that a judgment is both valid and invalid." *Reeder*, 701 So.2d at 1300. The failure to apply the continuous representation rule leads to absurd results

because an "attorney need only litigate a claim past the three (3) year preemptive period to avoid all consequences of his malpractice." *Id.*