

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2014

GAYLE DIETRICH and **WILLIAM H. DIETRICH**,
Appellants,

v.

**ACTAVIS, INC.; ACTAVIS ELIZABETH, LLC; ACTAVIS MID-ATLANTIC,
LLC; and PLIVA, INC.**,
Appellees.

No. 4D12-4589

[May 21, 2014]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Robin Rosenberg, Judge; L.T. Case No. 502009CA021586 XXXXMB.

David J. Sales of David J. Sales, P.A., Jupiter, for appellants.

Richard A. Dean of Tucker Ellis LLP, Cleveland, Ohio, and Ethen R. Shapiro of Hill Ward Henderson, P.A., Tampa, for appellees Actavis, Inc., Actavis Elizabeth, LLC, and Actavis Mid-Atlantic, LLC.

Rex A. Littrell of Ulmer & Berne LLP, Columbus, Ohio, Jeffrey F. Peck of Ulmer & Berne LLP, Cincinnati, Ohio, and Steven J. Rothman of Jones, Foster, Johnston & Stubbs, P.A., West Palm Beach, for appellee PLIVA, Inc.

PER CURIAM.

Affirmed. See *PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567, 2577 (2011) (holding federal law prevents a generic drug manufacturer from “independently changing” its safety labels to provide additional warnings); *Morris v. PLIVA, Inc.*, 713 F.3d 774, 777 (5th Cir. 2013) (extending *Mensing’s* holding so as to foreclose state tort claims based on a generic drug manufacturer’s failure to communicate approved label changes in a manner that the name brand manufacturer had not, i.e., “Dear Doctor” letters); *Guarino v. Wyeth, LLC*, 719 F.3d 1245, 1249 (11th Cir. 2013) (agreeing with the Fifth Circuit’s reasoning in *Morris*, and holding a generic drug manufacturer’s failure to communicate approved label changes is

preempted under federal law); *but see Brasley-Thrash v. Teva Pharm. USA, Inc.*, No. Civ. A. 10-00031-KD-N, 2011 WL 4025734, at *3 (S.D. Ala. Sept. 12, 2011) (holding *Mensing* does not prevent a generic drug manufacturer from sending out a letter “that simply reiterates warnings contained in the approved label”). We find the reasoning and holding stated in *Morris* and *Guarino* to be most consistent with the Supreme Court’s ruling in *Mensing*.

STEVENSON, CONNER and FORST, JJ., concur.

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Not final until disposition of timely filed motion for rehearing.