

## More Breaking News - Generic Preemption

**Monday, November 07, 2011**

Today's decision in Guarino v. Wyeth, No. 8:10-cv-2885-T-30TGW, [slip op.](#) (M.D. Fla. Nov. 11, 2011), contains the following interesting holdings: (1) Mensing, being an implied preemption case, contains no exception to preemption for FDCA violation-based claims:

“Plaintiff’s focus on decisions involving express preemption is misplaced. Mensing involved conflict preemption, which does not depend on the limitations of the language in a preemption provision. In other words, no parallel state-law claims or alternative theories of liability survive the Supreme Court’s ruling in Mensing.”

[Slip op.](#) at 5.

(2) There's no exception to preemption for "failure to communicate" claims based on alternative means such as Dear Doctor letters:

“[I]t is worth noting that the Supreme Court specifically rejected Plaintiff’s failure-to-communicate argument that generic drug manufacturers ... should have sent “Dear Doctor” letters providing additional warnings to prescribing physicians. The Supreme Court recently repeated its position on this issue by vacating the only remaining federal appellate opinion holding otherwise. See L. Perrigo Co. v. Gaeta, \_\_\_ S.Ct. \_\_\_, 2011 WL 2326476 (Oct. 31, 2011) (remanding for further consideration under Mensing).”

[Id.](#) at 5-6. See our [scorecard](#) for other generic preemption cases.