

A Critique of *Mutual Pharmaceutical Co. v. Bartlett*:
Its Effect on the Liability of Drug Manufacturers and Drug
Safety

Abstract

After the Supreme Court's decision in *PLIVA*, it seems fair to say failure-to-warn tort claims against the generic drug manufacturers are officially dead, had they only followed the federal regulations only requiring their labels to match those of their brand-name equivalents. No matter how inadequate the warning is, generic manufacturers can walk free—unless the Supreme Court overruled—while consumers harmed by dangerous drugs are now deprived of the most traditional way of receiving compensation. A theory of design defect as an alternative, however, provided hope for the plaintiff in *Mutual Pharmaceutical Co. v. Bartlett* to hold the generic manufacturer liable for the injury caused by their product. On June 24, 2013, despite this hope, the Supreme Court held 5-4 that federal law preempted a state-law design-defect claim against a manufacturer of generic drugs. This paper would challenge the *Mutual*'s ruling and verify why the finding of preemption by the majority is incorrect, while discussing its implications on the liability of drug manufacturers and drug safety.