

# Litigation: Mutual Pharmaceutical Co. Petitions Supreme Court to Reverse Design-Defect Decision

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The 2011 U.S. Supreme Court decision in *PLIVA Inc. v. Mensing* held that state law tort claims based on defective warning labels are preempted because generic drug manufacturers must use labels that are the “same” as the brand-name drugs’ labels. In *Bartlett v. Mutual Pharmaceutical Co., Inc.*, the First Circuit held federal law did not preempt state tort law in design defect cases. Following *PLIVA* generic companies have argued the reasoning should extend to preemption to design defect claims because generic companies must use the same design, just as they must use the same labels. Mutual has filed a writ of certiorari with the U.S. Supreme Court, asking for summary reversal of *Bartlett*. This article analyzes the cases, and Mutual’s argument for pre-emption.