



November 21, 2018

**MADIGAN URGES SUPREME COURT TO PRESERVE STATES' ABILITY TO SUE PHARMACEUTICAL MANUFACTURERS TO PROTECT CONSUMERS*****Amicus Brief Urges Supreme Court to Uphold the State's Ability to Take Legal Action Against Pharmaceutical Manufacturers for Misrepresentation or Misleading Consumers***

**Chicago** — Attorney General Lisa Madigan, as part of a bipartisan group of 23 state attorneys general, today urged the Supreme Court to uphold states' ability to sue pharmaceutical manufacturers when they mislead consumers about the potential side effects of their products. In an amicus brief filed in the United States Supreme Court, Madigan and the coalition argue that the pharmaceutical company Merck can be held liable under state law for misleading and misrepresenting the side effects of their drug Fosamax®.

Madigan and the coalition [filed an amicus brief today](#) in *Merck Sharp & Dohme Corp. v. Albrecht*, No. 17-290, arguing that if the court sides with Merck, it will hinder states' ability to take legal action against a pharmaceutical manufacturer for misleading and misrepresenting its products. Additionally, the attorneys general argued that Merck may be held liable under state law even if it is not liable under federal law.

"People have a right to know about the side effects associated with medications they are taking, and states must have the right to hold accountable companies that mislead or misrepresent their products," Madigan said.

After suffering from a specific type of fracture, hundreds of Fosamax® users filed personal injury lawsuits against Merck, alleging that it did not warn consumers about the risk of these specific fractures. Merck claims that, because the FDA did not approve a warning label for a different type of fracture, it is not liable under state law.

The brief argues that:

- The Constitution gives the states or the people all powers that are not specifically delegated to the federal government.
- States have long regulated drug labeling and the duty to warn both physicians and patients about emerging safety risks predates the beginning of federal drug regulations, and this must be upheld by the court.
- Merck's argument would break precedent in the balance between state and federal regulations, especially with regards to consumer protection.

Joining Madigan in filing the amicus were the attorneys general from California, Connecticut, the District of Columbia, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Mississippi, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia and Washington.

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