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# ***Kratom Litigation: What Drives Juror Decisions***

## ***Part 2: The Three Pillars of Fault | User Choices, Corporate Practices, and Warnings***

by [Dr. Juli Adelman](#) on February 19, 2025

Building on our analysis of the first U.S. kratom verdict, which resulted in a \$2.5 million award, this article leverages decades of proprietary research in pharmaceutical product liability cases to identify what evidence was most important to jurors, what questions they had, and how that might play out in the emerging kratom litigation. What we know from previous cases is that jurors focus on three critical factors when assigning fault: (1) the user of the product, (2) the manufacturer/supplier, and (3) warnings and labeling. Below, we explore what that might mean for future kratom litigation.

### **1. The User of the Product**

It is well-known that jurors rigorously scrutinize a plaintiff's credibility and choices, and this is especially true in cases involving kratom use. While some may question why a plaintiff chose to use kratom, it is often sought as an alternative treatment for various health conditions. Our research indicates that jurors are particularly interested in why a plaintiff is taking an FDA-approved pharmaceutical product, especially when used "off-label." When a drug is taken in a manner not prescribed by a doctor, jurors tend to be less sympathetic and may assign a portion of fault to the plaintiff. In kratom-related cases, a key issue will be how jurors perceive self-medication with an FDA-unapproved product. Based on what we have learned, the jurors may consider the following factors:

- Did the plaintiff pursue safer alternatives (e.g., medical care, physical therapy) before turning to kratom?
- Was the plaintiff's age or education level a factor in their ability to assess risks?
  - Example: A teenager or young adult may receive more sympathy due to limited life experience, whereas a middle-aged professional is held to a higher standard of informed decision-making.
- Was kratom used to replace another addiction? Jurors often penalize plaintiffs who substitute one dependency for another, particularly given kratom's documented addictive potential.
- Was the plaintiff healthy? Did they have preexisting health conditions?

Ultimately, every case has its own story to tell about the plaintiff considering how jurors will judge alternative medicine and choices of the plaintiff in advance will assist with case strategy.

## 2. The Suppliers and Manufacturers

While jurors consider a plaintiff's choices, they also place significant importance on product safety—an especially contentious issue in the case of kratom. Lobbyists, nonprofits, researchers, and proponents claim that kratom is both safe and an effective treatment for various health conditions. The kratom movement has gained considerable influence, demonstrated by its success in 2016 in preventing the DEA from classifying kratom as a Schedule I drug. At the time, the DEA stated it had not seen such a strong public response in 20 years. Since then, kratom's user base, community, and market have expanded substantially. Much of this growth has happened secretly through multiple layers of limited liability corporations and mislabeling products to get imports through customs. This lack of transparency in the supply chain poses a problem for kratom companies as jurors will focus on the following:

Who is the supplier and manufacturer? Jurors want transparency. Kratom suppliers often obscure their identities through layered LLCs with ambiguous names. What we have learned from previous litigation from breach of contract cases to wrongful death, hiding the identity of your corporation angers jurors and more often than not, as early as voir dire jurors will label that behavior the “the shell game” and punish that behavior.

How is the product tested for safety? The FDA has issued alerts allowing inspectors to confiscate products containing kratom. Kratom manufacturers and suppliers sidestep this by labeling packages not fit for human consumption and labeling products as fertilizer or other products. The pathway of kratom begins in southeast Asia where the leaves are picked and dried and the time frame for kratom to get from southeast Asia to the US is about a month. Once the product gets through customs it is sent to a manufacturing location where it is cleaned, processed, blended, cooked and packaged. In previous product liability cases the testing of the product was extremely important to jurors and they set a high bar for what they expect from a testing process. Once kratom is in the US jurors will be highly focused on what testing was done of their products for bacteria, heavy metals, purity, and amounts of alkaloids. Once this product is in the hands of the supplier and manufacturer in the US the jurors will be extremely focused on what the supplier and manufacturer did to test the product and make sure it was safe.

## 3. Warnings and Labels

Kratom is being sold online, at gas stations, vape shops, and other locations in the form of energy shots, pills, tea, and more. However, product labeling is often unclear, leaving users to seek guidance from alternative sources such as books sold on Amazon, Reddit and other online forums, or even their dealer. Juror tolerance for vague labeling will vary. Some jurors take a literal approach, reading labels word for word, while others rely on common sense or general understanding. Regardless of interpretation, product labeling—particularly any false claims or lack of warnings—will be a central issue for the jury. Inadequate or misleading labels could pose significant challenges for kratom companies in court.

## Strategic Takeaways for Kratom Litigation

1. **Anticipate juror biases:** If the plaintiff lacks credibility and has some culpability, plaintiff's counsel can focus on the defendant and what they didn't do to make the product safe.
2. **The jury will hold someone accountable:** Defendants evade liability by pointing the finger at a shell corporation. To avoid surprises at trial be prepared to explain to the jury who you are and how you made sure the product was safe.
3. **Warning and Labels:** Both plaintiff and defense council should create a voir dire questions to find the jurors that view warnings and labels in a way most favorable to their case.

By applying pharmaceutical liability frameworks to kratom cases, attorneys can preemptively address juror expectations, make decisions, and avoid surprises at trial.

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