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Product Liability: Cannabis Product Claims

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A Practice Note providing guidance on the evolving landscape of product liability litigation involving cannabis and cannabis-related products. This Practice Note explores traditional claims, such as design defect, manufacturing defect, and failure to warn, alongside non-traditional actions involving state consumer fraud statutes and the Racketeer Influenced and Corrupt Organizations Act (RICO). It highlights the unique challenges for businesses navigating a patchwork of state-specific regulatory frameworks without federal oversight. This resource also addresses crucial defense considerations, including strategies for managing complex discovery, retaining effective regulatory and medical expert witnesses, navigating multi-case litigation, and evaluating settlement options. By examining recent cases and emerging legal trends, this Practice Note offers valuable insight into anticipated claims and strategic approaches for entities defending against these complex lawsuits.

As some states have legalized cannabis and cannabis-related products, the manufacture, distribution, and use of these products has increased. As is common with consumer products in general, increased usage of cannabis products may increase the number of claims alleging injury from those products. This litigation environment is evolving against the backdrop of significant federal policy shifts, most notably, the Trump administration's December 18, 2025 directive initiating the process to reclassify cannabis from Schedule I to Schedule III under the Controlled Substances Act. Although the rulemaking is still pending, the potential rescheduling underscores the rapid changes shaping the industry.

Many businesses involved in the manufacture, distribution, and sale of cannabis products are relatively new to the market and may have little or no experience defending product liability claims. Even companies with extensive experience handling non-cannabis product liability cases face unique challenges when defending cannabis-related claims. Unlike many consumer goods, cannabis products are not regulated at the federal level but are instead subject to a patchwork of state-specific regulatory frameworks.

This Practice Note sets out potential product liability claims related to cannabis products, discusses the law applicable to these claims, addresses challenges faced by plaintiffs, and provides guidance on strategic considerations regarding specific defenses, discovery, expert witnesses, multi-case management, and settlement strategy for entities defending against product liability claims. The number of product liability cases filed alleging harms from cannabis is likely to increase into the future. Therefore, this Note assesses potential risks based on:

- The cases that have been filed so far.
- Other similar or related cases that shed light on potential issues in future cannabis (THC) cases.
- Other related products, such as cannabidiol (CBD) and kratom, that have been the subject of recent product liability lawsuits.

Types of Claims

Product liability cases traditionally involve claims of personal injury, property damage, or economic loss resulting from defects in the design, manufacture,

distribution, or sale of a product. A product defect can manifest in:

- The manufacture of the product.
- The design of the product.
- The instructions or warnings accompanying the product.

(See, for example, Restatement Third, Torts: Product Liability, § 2.)

In recent years, plaintiffs' lawyers have also actively pursued other non-traditional product-related causes of action, such as recovery under consumer protection statutes, public nuisance, and racketeering laws.

Manufacturing Defect Claims

Plaintiffs bringing manufacturing defect claims allege that a product is improperly manufactured and departs from its intended design, resulting in injury. For more information about manufacturing claims generally, see Practice Note: Product Liability Manufacturing Defect Claims.

A common manufacturing defect claim involves allegations that a product contains trace amounts of harmful contaminants from poor quality control in the manufacturing process. For example, several cases have been filed alleging benzene and NDMA contamination in pharmaceutical products (*Huertas v. Bayer US LLC*, 120 F.4th 1169, 1172 (3d Cir. 2024); *In re Zantac (Ranitidine) Litigation*, 644 F. Supp.3d 1075, 1098 (S.D. Fla. 2022).)

The cannabis industry has also seen some manufacturing defect claims in the context of contamination. For example, in 2022, a Canadian cannabis producer reached a $2.31 million settlement in a class action concerning pesticide-contaminated medical marijuana. The marijuana was recalled due to the presence of myclobutanil and bifenazate pesticides, neither of which were authorized for use on cannabis plants in Canada. The lead plaintiff experienced nausea and dizziness, allegedly from consuming the medical cannabis, and brought numerous claims on behalf of the class, including negligent design, development, testing, manufacturing, distribution, marketing, and sales. For its negligent manufacturing claim, the plaintiff specifically alleged that defendants failed to:

- Conform to industry standards in manufacturing.
- Implement appropriate quality control methods.
- Conduct routine inspections of the facilities where the products were manufactured to ensure unauthorized pesticides were not being used.

(*Downton v. Organigram Holdings Inc.*, 2019 NSSC 4 (N.S. S.C.); *Downton v. Organigram Holdings Inc.*, Hfx No. 460984 (N.S. S.C. Mar. 3, 2017); see Recall of Cannabis for Medical Purposes, Organigram, Inc., Health Canada, Feb. 8, 2017); Organigram settling class action that alleged pot tainted with pesticides, CBC News, June 24, 2022.)

Contamination of cannabis products may serve as the basis for future product liability lawsuits in the United States. State-level recalls demonstrate potential contamination issues that potential plaintiffs can use to bring lawsuits. For example:

- California's Department of Cannabis Control issued a mandatory recall on January 26, 2022, for a batch of cannabis flower that was contaminated with mold (see CA Dep't of Cannabis Control: Cannabis recalls archive: Claybourne Co. Head Banger).
- In June 2024, California cannabis regulators recalled a vape that exceeded the safety limits for a single chemical, the insecticide chlorfenapyr, (see California recalls cannabis vape many months after it was told of contamination, Los Angeles Times, June 25, 2024 (subscription required)).
- On January 31, 2025, the Colorado Department of Revenue, Marijuana Enforcement Division, recalled marijuana concentrates sold by Luminescence Labs, Inc., when several batches were found to contain traces of chlorfenapyr (see CO Dep't of Revenue: Health and Safety Advisory: Luminescence Labs, Inc. (January 31, 2025)).

While recent state-level recalls have not yet instigated manufacturing defect claims against cannabis producers in the United States, past cases involving contaminated food and pharmaceuticals suggest that recalls highlight a real risk of future litigation. For example, plaintiffs have sued manufacturers of baby formula, girl scout cookies, and protein bars for alleged heavy metals and pesticides contamination in their products (*Mayo v. Girl Scouts of the United States of America*, No. 1:25-cv-01367 (E.D.N.Y. 2025); *In re KIND LLC "Healthy & All Natural" Litig.*, 627 F. Supp. 3d 269 (S.D.N.Y. 2022)).

In a recent case stemming from a 2021 recall of Beech-Nut baby food due to elevated arsenic levels, plaintiffs filed a product liability lawsuit against Beech-Nut and Gerber, alleging that neurotoxic heavy metal contamination caused developmental injuries such as autism and cognitive impairment in children (Plaintiffs' Second Amended Petition, *In re Baby Food Products Liability Litigation*, No. 3:24-md-03101-JSC (N.D. Cal. 2024)). In other cases, state and federal regulators had not initiated any recall or enforcement against manufacturers. Rather, consumer groups triggered actions by independently testing products purchased off the shelf (See Consumer Reports: Health: A Third of Chocolate Products Are High in Heavy Metals, CR's Tests Find (October 25, 2023)).

Plaintiffs have pursued these claims even in the absence of provable physical injuries. Many of these cases have been economic class actions in which plaintiffs alleged that they would not have purchased the products at a premium had they known the products contained unsafe contaminants. Plaintiffs may bring additional personal injury-type claims, including medical monitoring and fear of injury resulting from exposure to contaminants in consumer products, to obviate the need to prove an actual injury. These developments signal a growing legal trend that could have significant implications for manufacturers across industries, particularly those operating in emerging markets like cannabis.

Design Defect Claims

In design defect cases, plaintiffs allege that they were harmed by flaws inherent in a product's design. Courts typically evaluate these claims using either:

- The consumer expectation test, which considers whether a product performed as a reasonable consumer would expect.
- The risk-utility test, which weighs the product's benefits against its potential risks.

For more information about design defect claims generally, see Practice Note, Product Liability Design Defect Claims.

Several cannabis-related design defect claims have been filed in state courts. These claims illustrate the types of fact patterns counsel may encounter.

Unforeseeable Adverse Effects

While consumers may reasonably anticipate altered mental states from certain cannabis products, severe side effects, such as psychosis from high-potency products, may form the basis of design defect claims.

Most notably, plaintiffs have filed cases against Stiiizy IP, LLC, a manufacturer of marijuana vaporizers, in California state court, alleging that Stiiizy's high-potency marijuana product causes cannabis-induced psychosis (CIP) in young people (Complaint for Damages and Demand for Trial by Jury, *Jane Does v. Stiiizy IP, LLC*, 2024 WL 5103937 (Sup. Ct. Cal. L.A. Cnty. Dec. 12, 2024); Complaint for Damages and Demand for Trial by Jury, *John Doe v. Stiiizy Inc.*, No. 24STCV33787 (Sup. Ct. Cal. L.A. Cnty. Dec. 20, 2024)).

The complaints specifically alleged that:

- The defendants' high potency vaporizers are defective in design in that they do not perform as safely as an ordinary consumer expects them to perform when used in an intended and foreseeable way.
- The products' failure to perform safely was a substantial factor in causing the plaintiffs' harm (cannabis-induced psychosis).

(Complaint at ¶ 112, *Jane Does v. Stiiizy IP, LLC*, 2024 WL 5103937.)

Plaintiffs' complaints emphasize that consumption of high-potency cannabis leads to a higher risk of developing acute adverse effects, such as paranoia and psychosis (Complaint at ¶17, *Jane Does v. Stiiizy IP, LLC*, 2024 WL 5103937 (citing Mark A. Prince and Bradley T. Conner, Examining links between cannabis potency and mental and physical health outcomes, 115 Behavior Research & Therapy 111-120 (Apr. 2019) (subscription required for full text))).

A similar case in a Texas state court alleged that a product containing THC-P, a synthetic cannabinoid 30x more potent than THC, induced a mental health episode in the plaintiff (Plaintiff's Original Petition, *Jane Doe v. McCreight*, 2025 WL 1689772 (353rd Dist. Ct., Travis County, Tex. June 12, 2025)).

A New Jersey court held defective design and failure to warn claims were viable in a suit filed by a champion collegiate athlete who claims the defendants' edible products caused him to develop cannabis-induced psychosis, resulting in a suicide

attempt (*Liskowitz v. 732 Vape*, No. MON-L-003107-24 (Sup. Ct. N.J. June 18, 2025)). To succeed on the merits, these plaintiffs need to show not only that psychosis was unexpected, but also that it was caused by the product rather than an underlying mental health condition.

The complaints against Stiiizy allege that the company deliberately targeted young consumers through its marketing, contributing to a surge in youth psychosis that has profoundly impacted their lives (Complaint, *John Doe v. Stiiizy Inc.*, No. 248TCV33787).

Similarly, in the nicotine context, plaintiffs accused Juul Labs, Inc. of youth-focused advertising and downplaying the risks of nicotine addiction. Juul ultimately agreed to a $1.7 billion settlement in December 2022 to resolve approximately 10,000 individual lawsuits involving personal injury and addiction (see Juul to Pay $1.7 Billion in Legal Settlement, The Wall Street Journal, Dec. 9, 2022 (subscription required)). This parallel highlights a litigation strategy, framing youth-targeted marketing as a public health issue, that cannabis companies should be acutely aware of as similar legal theories begin to surface in their industry.

Defective Hardware

Design defect claims may also arise from injuries caused by defective vaporizers rather than the active ingredient THC. For example, in February 2025, a plaintiff brought a claim in Oregon state court against a cannabis manufacturer and dispensary alleging that an exploding cannabis vaporizer caused thermal and chemical burns to his body, including his eyes, torso, and penis (Complaint, *Mendes v. HWY 99 Cannabis Co.*, No. 25-cv-08719 (Circ. Ct. Lane Cnty. Or. Feb. 7, 2025)).

Plaintiffs have successfully obtained verdicts in exploding e-cigarette suits alleging design defect, demonstrating the likelihood of success in cases involving defective cannabis vaporizers. For example, a Florida plaintiff won a $15 million verdict against manufacturers of an e-cigarette where the internal battery exploded and caused the plaintiff to suffer third degree burns. The suit alleged that there were several defects in the design and manufacture of the battery, including an absence of adequate thermal protection. (Complaint, *Ortega v. Vapor Life LLC*, 2017 WL 11815634 (Circ. Ct. Fla. 2017); see Top Class Actions: Lawsuits & Settlements: $15M Awarded in Lawsuit Over E-Cig Battery Explosion Injuries (Oct. 22, 2021).)

Failure to Warn Claims

A product is defective in its instructions or warnings if both:

- The foreseeable risks of harm posed by the product could have been avoided if a seller had provided reasonable instructions or warnings.
- The seller's failure to provide instructions or warnings rendered the product not reasonably safe.

(Restatement (Third) of Torts: Prod. Liab. § 2.) For more information about failure to warn claims generally, see Practice Note, Product Liability Failure to Warn Claims.

Manufacturers should expect failure to warn claims alleging injury resulting from ingesting products marketed as CBD-only that, in fact, contained THC. For example, consumers filed a string of these cases against Curaleaf in 2022 (Complaint, *Agbonkhese v. Curaleaf Inc.*, No. 3:21-cv-01675 (D. Or. Nov. 19, 2021); Complaint, *Crawforth v. Curaleaf, Inc.*, 2021 WL 11135421 (D. Or. Sept. 29, 2021); Complaint, *Lopez v. Curaleaf Inc.*, No. 3:21-cv-1465 (D. Or. Oct. 6, 2021); Complaint, *Williamson v. Curaleaf, Inc.*, No. 3:22-cv-782 (D. Or. May 30, 2022)). Plaintiffs alleged experiencing "anxiety," "psychosis," and "discomfort and distress lasting several hours," with at least five people going to the emergency room allegedly due to the use of CBD drops.

One lawsuit, which was publicly settled for $50,000 in January 2022, alleged that the company failed to warn that its CBD drops contained THC or may have been contaminated with it (Complaint at 4, *Agbonkhese*, No. 3:21-cv-01675). Nine similar lawsuits, all tied to the same batch of CBD drops and based on failure-to-warn claims, were also settled by that time (see Curaleaf Publicly Settles a Lawsuit Over THC-Laced CBD Drops, Willamette Week, Jan. 6, 2022). Later, in October 2022, the company agreed to a $100,000 settlement in a class action suit alleging that it failed to disclose that the CBD product contained substantial amounts of THC (Complaint at 9, *Williamson*, No. 3:22-cv-782; see Top Class Actions: Lawsuits & Settlements: Curaleaf THC false advertising $100K settlement (Aug. 1, 2023)).

In another case concerning a CBD product, a man alleged that he became intoxicated after using a CBD vape and accidentally hit a bus. He sued both the vape manufacturer and retailer claiming that he was not warned that the vape contained a

substance that would make him intoxicated. The plaintiff alleged that the vape actually contained THC and brought negligence, failure to warn, and state consumer protection law claims. (Notice of Removal, *Howard v. GCHNC3 LLC*, No. 5:22-cv-00326 (E.D. Ky. Dec. 14, 2022).)

Manufacturers are not the only targets of failure to warn claims. Retailers may also be subject to these claims. Recently, a plaintiff in Oregon brought a case against a marijuana retailer for failing to warn of the danger of a product after recommending that the plaintiff purchase a cannabis syrup and ingest the amount according to the package instructions. The plaintiff ingested 40.21 mg of THC based on these instructions and allegedly experienced muscle spasms, psychomotor agitation, elevated heart rate, extreme discomfort, shortness of breath, nausea, vomiting, hypokalemia, and muscular paresis. The plaintiff claimed he was unable to walk and that his ER doctors diagnosed him with THC overdose. (Complaint, *Fitzgerald v. Arcanna*, No. 24CV61167 (Circ. Ct. Multnomah Cnty. Or. Dec. 30, 2024).)

These cases are a reminder that retailers are not necessarily absolved of responsibility regarding product instructions and warnings. Retailers may be shielded by innocent seller statutes in some jurisdictions. These statutes protect non-negligent sellers if plaintiffs can still pursue claims against a solvent manufacturer, though there are some exceptions.

Most of the failure to warn cases filed against cannabis manufacturers alleging personal injury have been settled or dismissed before the motion to dismiss or motion for summary judgement stage. Other industries provide some perspective on how courts may adjudicate these claims if they proceed to motions practice. For example, courts have dismissed failure to warn claims related to alcohol use, reasoning that a manufacturer's duty to warn arises when there is a need to inform consumers of unknown dangers, and the dangers associated with alcohol consumption are well known (*Cook v. MillerCoors LLC*, 872 F. Supp. 2d 1346, 1350-51 (M.D. Fla. 2012); *Pemberton v. Am Distilled Spirits Co.*, 664 S.W. 2d 690, 692-93 (Tenn. 1984)).

Cannabis defendants may be able to mount a similar defense for certain alleged injuries by arguing that the potential for agitation and mental effects is a well-known side effect of marijuana consumption, particularly as use becomes more common with legalization.

Statutory Consumer Fraud Claims

Plaintiffs often rely on state consumer fraud statutes to challenge product marketing, even when they have not suffered physical harm. These claims typically involve economic injury. For example, plaintiffs may argue that they overpaid for a product based on misrepresented attributes or risks and are therefore entitled to a refund. These statutes can potentially broaden the scope of cannabis product liability claims by including consumers without traditional injuries. Outside the cannabis context, however, at least one court has found that a plaintiff's mere purchase of a product based on the manufacturer's alleged deceptive and unfair business practices does not constitute injury-in-fact (*In re Johnson & Johnson Talcum Powder Products Mktg., Sales Practices and Liab. Litig.*, 903 F.3d 278, 280 (3d Cir. 2018)).

RICO Claims

Based on recent US Supreme Court precedent, plaintiffs may be able to recover for economic losses stemming from underlying personal injuries by pursuing Racketeer Influenced and Corrupt Organizations (RICO) Act claims, despite claims for personal injuries not being directly compensable under the RICO Act.

In *Medical Marijuana Inc. v. Horn*, the plaintiff tested positive for THC after consuming the defendants' CBD products. After refusing to engage in a substance abuse program, he was fired from his trucking job. The plaintiff argued that the defendants falsely marketed their CBD product as containing 0% THC and that this fraud constituted a "pattern of racketeering activity" that led to his job loss. He sought to recover his lost wages under RICO. (*Medical Marijuana, Inc. v. Horn*, 604 U.S. 593, 597-98 (2025).)

The majority held that the RICO Act provides that "[a]ny person injured in his business or property by reason of a violation of [RICO] may sue." The court found that the ordinary meaning of "injured" is "hurt, damaged, or wounded," and it observed that personal injuries can, in some instances, lead to damages to business or property. The plaintiff did not articulate an underlying personal injury or why the products sold by

the manufacturer were unsafe, and the court declined to rule on whether the plaintiff was actually injured. (*Medical Marijuana, Inc.*, 604 U.S. at 600-01.)

Manufacturers and sellers of cannabis products should monitor future cases alleging RICO violations based on marketing of cannabis products to assess whether courts require plaintiffs to demonstrate actual physical harm beyond mere product consumption.

In one pending case, several hemp vape manufacturers and sellers have asked a Georgia federal court to dismiss a proposed class action alleging a conspiracy to sell vapes containing THC levels above legal limits. At least one defendant contends that the plaintiff has not plausibly alleged a pattern of racketeering activity because she fails to claim any concrete harm stemming from the alleged violations of the Controlled Substances Act (CSA), such as criminal liability or involuntary intoxication with resulting damage to business or property. (Plaintiff's Response to Defendant Cloud 9 Smoke & Vape, LLC's Motion to Dismiss Plaintiff's Complaint, *Ledbetter v. Cloud 9 Online Smoke & Vape LLC*, 2024 WL 6907208 (N.D. Ga. Oct. 21, 2024).) This case and others like it could offer insight into how courts will interpret harm and pattern requirements in cannabis-related RICO claims.

Public Nuisance Claims

A public nuisance claim arises when a person or entity unreasonably interferes with a right shared by the general public. Rooted in common law, this doctrine is often applied in environmental, land use, and public health contexts. In recent years, plaintiffs have increasingly invoked public nuisance law in product liability cases involving consumer products that can cause harm, including opioids, tobacco, and firearms, though its use remains controversial.

Some courts view it as a flexible tool for addressing widespread public health crises, while others argue it is ill-suited for product-related harms and could expose manufacturers to limitless liability (for example, *In re Nat'l Prescription Opiate Litig.*, 589 F. Supp. 3d 790, 812-13 (N.D. Ohio 2022) (common law public nuisance claims related to opioids not abrogated by product liability statute); *City of Huntington v. AmerisourceBergen Drug Co.*, 609 F. Supp. 3d 408, 475 (S.D. W. Va 2022) (common law of public nuisance is inapplicable to claims arising from the distribution of opioids)).

So far, public nuisance claims against cannabis growers have been rare and have focused on more traditional nuisance claims, such as persistent odors from cultivation operations (see, for example, 'Landmark' Ruling Certifies a Class Action Against Valley Crest for 'Nuisance Odor' in Carpinteria Valley, Santa Barbara Independent, March 6, 2025; Cannabis: County Files Suit, License Surrendered, Plants Pulled, Santa Barbara Independent (June 10, 2021)).

Anticipated Injuries

Although there have not yet been significant mass tort claims involving cannabis-related products, an analysis of the few product liability cases alleging cannabis-related injuries, along with statements from regulators and recently published scientific literature, identify cognitive and cardiovascular-related injuries as a potential focus of future litigation.

Cognitive Injuries

One cognitive injury that counsel should anticipate as the basis for a product liability claim is cannabis-induced psychosis (for example, *John Doe v. Stiiizy Inc.*, No. CV-248TCV33787). This condition often refers to hallucinations or delusions that develop during or after the ingestion of cannabis.

In addition to psychosis, consumers who unknowingly ingest THC, such as in the Curaleaf lawsuits where CBD products were found to be tainted with THC, may bring claims for harms suffered, such as panic attacks and anxiety (Complaint, *Agbonkhese*, No. 3:21-cv-01675; Complaint, *Crawforth*, 2021 WL 11135421; Complaint, *Lopez*, No. 3:21-cv-1465; Complaint, *Williamson*, No. 3:22-cv-782).

Various studies reveal other potential cognitive injuries that may form the basis of a product liability suit. For example:

- The National Institute on Drug Abuse, an arm of the National Institutes of Health (NIH), has collected studies indicating that frequent or heavy cannabis use has been linked to problems in cognitive functions such as learning and memory, attention, processing speed, perceptual motor function, and language (see NIH: National Institute on Drug Abuse: Cannabis (Marijuana): What is the relationship between cannabis use and mental health?).

- A retrospective matched cohort study published in JAMA Neurology found that individuals with cannabis use severe enough to require hospital-based care were at an increased risk of a new dementia diagnosis (see Daniel T. Myran and others, Risk of Dementia in Individuals With Emergency Department Visits or Hospitalizations Due to Cannabis, JAMA Neurol. (Apr. 14, 2025) (subscription required for full text)).
- A meta-analysis that reviewed trials of cannabinoids used for treating several indications, including chemotherapy symptoms, chronic pain, and depression, identified an increased risk of participants experiencing psychiatric disorders over placebo (see Penny Whiting and others, Cannabinoids for Medical Use: A Systematic Review and Meta-analysis, JAMA (Jun 23-30, 2015)).

Cardiovascular Injuries

Counsel should also anticipate product liability claims alleging cardiovascular injuries from cannabis products. In one of the cases recently filed against Curaleaf, a plaintiff alleged they experienced stroke-like symptoms, purportedly due to a CBD product contaminated with THC, which ultimately resulted in the plaintiff's death (see Federal Lawsuit Blames Curaleaf for Death From Undisclosed Amounts of THC in Its CBD Drops, Willamette Week, Jan. 1, 2022). Additionally, a 2024 study published in the Journal of the American Heart Association suggested that cannabis use may be a risk factor for cardiovascular disease and premature cardiovascular disease (see Abra M. Jeffers and others, Association of Cannabis Use with Cardiovascular Outcomes Among US Adults, J. Am. Heart Assoc. (Feb. 28, 2024)).

More recent 2025 meta-analyses also found that cannabis use is significantly associated with a higher incidence of adverse cardiovascular events like acute myocardial infarction and stroke, including among young adults (see Ibrahim Kamel and others, Risk of Myocardial Infarction in Cannabis Users: A Systematic Review and Metanalysis, JACC (Apr. 1, 2025) (subscription required for full text); Wilheim Storck and others, Cardiovascular risk associated with the use of cannabis and cannabinoids: a systematic review and meta-analysis, Heart (Oct. 29, 2025) (subscription required for full text)).

A 2025 study looking at 55 participants found that chronic cannabis smoking and THC ingestion were associated with dysfunction of the inner lining of blood vessels (an early marker of cardiovascular disease) similar to that observed in tobacco smokers (see Leila Mohammadi and others, Association of Endothelial Dysfunction With Chronic Marijuana Smoking and THC-Edible Use, JAMA Cardiol. (May 28, 2025)).

Conversely, a 2015 meta-analysis looking at trials of cannabinoids used for treating several indications did not find an increased risk of participants experiencing cardiac disorders versus placebo (see Whiting, Cannabinoids for Medical Use: A Systematic Review and Meta-analysis, JAMA).

Other Injuries

A study from George Washington University highlights the growing concern around cannabinoid hyperemesis syndrome (CHS), a condition increasingly linked to long-term, frequent cannabis use (This Painful Syndrome Is Sending Cannabis Users to the ER – Are You at Risk? George Washington School of Medicine (Mar. 25, 2025)). CHS is characterized by repeated bouts of severe nausea, uncontrollable vomiting, and intense abdominal pain, often requiring emergency medical care. Although its exact prevalence remains unclear, researchers and clinicians report a rise in cases as daily cannabis use becomes more common. A class action has been filed in Canada against a large cannabis producer, asserting that the producer failed to adequately warn consumers about the risk of developing CHS (Aurora Cannabis Faces Class Action Over Cannabinoid Hyperemesis Syndrome Risk, Forbes (Jun. 17, 2025)). As awareness of CHS grows, it may emerge as a future claimed injury in cannabis-related litigation in the United States.

In addition, counsel should anticipate that hepatic or reproductive damage may form the basis of product liability claims, as revealed in:

- Published guidance from the US Food and Drug Administration (FDA) stating that potential harms or side effects from cannabis-derived products include:
  - liver injuries;
  - male reproductive toxicity or damage to fertility in males; and
  - damage to male offspring of females who have been exposed.

  (See FDA: Consumer Updates: What You Need to Know (And What We're Working to Find Out) About

Products Containing Cannabis or Cannabis-derived Compounds, Including CBD.)

- A meta-analysis finding that cannabis use during pregnancy was associated with greater odds of preterm birth, small for gestational age, and low birth weight (see Jamie Lo and others, Prenatal Cannabis Use and Neonatal Outcomes: A Systematic Review and Meta-Analysis, JAMA Pediatr. (May 05, 2025) (subscription required for full text)).
- The warning label of a CBD product, Epidiolex, approved by the FDA to treat certain seizures, which warns of potential hepatocellular injury (see FDA: Label for Epidiolex (last updated July 2025)).

Predicting Future Claims

When looking at potential product liability claims, the cannabis industry should look to consumer class action claims alleging economic harms to identify injuries that potential plaintiffs might focus on. These consumer class action claims require plaintiffs to identify the harm caused by the product but generally do not require specific causation experts, which makes it easier for plaintiffs to bring these claims forward. Consequently, these cases can act as an early indicator for potential cannabis-related product liability cases.

In addition to cannabis class actions, there has also been a recent spike in cases relating to kratom, which is a tree (*Mitragyna speciosa*) native to Southeast Asia that the FDA reports is often used to self-treat conditions including diarrhea, anxiety and depression, opioid use disorder, and opioid withdrawal (see FDA: Public Health Focus: FDA and Kratom). An NBC News report on the increasing use of kratom across the US notes that kratom is inexpensive, widely available, and unregulated in many areas, which has prompted growing calls for oversight due to safety concerns (see Calls for Regulation as Kratom Use Soars, NBC News, Mar. 11, 2025).

The FDA has recommended classifying 7-Hydroxymitragynine (7-OH), a potent opioid-like compound derived from kratom, as a Schedule I controlled substance due to its high abuse potential and lack of accepted medical use. The move follows enforcement actions and growing litigation, including a proposed class action alleging companies concealed the compound's addictive properties. (FDA Takes Steps to Restrict 7-OH Opioid Products Threatening American Consumers, FDA (July 29, 2025); Class Action Lawsuit Alleges Addiction, Financial Loss from Kratom-Related Compound 7-OH, Supply Side Supplement Journal (Oct. 22, 2024).)

Lawsuits related to kratom usage allege injuries such as withdrawal, liver failure, vomiting, and even death due to toxicity (see Jury Awards $2.5M to Decedent's Family in Kratom Wrongful Death Action, Wolters Kluwer Products Liability Law Daily, 2023 WL 4700715 (July 24, 2023); Plaintiff's Complaint, *McKay v. Plant Specimen Supply, LLC*, 2025 WL 2269513 (Ca. Sup. Ct. July 15, 2025); Plaintiff's Complaint, *Moller v. Martian Sales, Inc.*, 2024 WL 264380 (E.D. La. Jan. 24, 2024); Plaintiff's Complaint, *Loftus v. Rootz Smoke Shop, Inc.*, 2023 WL 8880030 (Ca. Sup. Ct. May 10, 2023); Plaintiff's Complaint, *Sturgis v. Socal Herbal Remedies, LLC*, 2019 WL 13273082 (Pa. Com. Pl. Jan. 23, 2019)). Though kratom is not a cannabis-derived product, these and similar cases are worth monitoring to understand the strategies and tactics employed by the plaintiffs' bar, as it is likely that similar strategies will be employed in cannabis litigation as it develops.

Following the Science

While new research continues to highlight potential adverse outcomes that may lead to litigation, counsel should recognize the limitations often present in these studies. For instance:

- Many of these studies rely on self-reporting, retrospective methods, which are susceptible to recall bias and misclassification issues.
- Some studies lack detailed data on the type of cannabis use, whether ingested or smoked, which may be relevant to understanding the relationship between cannabis use and specific adverse events.
- Reverse causation may exist in cognitive function cases, where individuals use cannabis to manage early symptoms of cognitive decline before receiving a formal diagnosis.

As legal cannabis use continues to grow, we can expect new research to be published on the effects it is having on the population. Along those lines, on December 2, 2022, President Biden signed the Medical Marijuana and Cannabidiol Research Expansion Act into law, which aims to advance research on the potential risks and medical benefits of cannabis and cannabis products (Pub. L. No. 117-215, 136 Stat. 2257 (2022)). This additional funding can support research that identifies possible safety

risks that may lead to future product liability claims. Indeed, the FDA notes on their website that they are working to answer questions about the science, safety, and quality of products containing cannabis and cannabis-derived compounds (see FDA: Consumer Updates: What You Need to Know (And What We're Working to Find Out) About Products Containing Cannabis or Cannabis-derived Compounds, Including CBD).

In addition, in December 2025, President Trump issued an executive order directing federal agencies to expedite the process of moving cannabis from Schedule I to Schedule III under the Controlled Substances Act: an unprecedented step that, while not yet finalized, signals a major shift in federal recognition of cannabis's medical uses and may ease long standing barriers to clinical research. If implemented, Schedule III status could expand access for researchers, accelerate scientific study, and generate more robust data on both therapeutic applications and potential health risks. Such developments are likely to influence future product liability claims, as enhanced research may clarify the scope of foreseeable risks, inform regulatory expectations, and shape the standards to which cannabis industry participants are held. (Executive Order: Increasing Medical Marijuana and Cannabidiol Research (Dec. 18, 2025).)

Application of Law

State Versus Federal Court

Most cannabis-related product liability cases proceed in state courts, a trend that is likely to persist for two key reasons. First, in the absence of federal legalization, plaintiffs often rely on state regulatory frameworks to support their claims. Without a unified federal system governing cannabis cultivation, labeling, and marketing, plaintiffs instead allege violations of state-specific laws and seek rulings from judges more familiar with those standards. For instance, a recent class action in Minnesota alleged that mislabeled high-potency cannabis products violated Minnesota packaging and marketing regulations, forming the basis for negligence and failure-to-warn claims (see ClassAction.org: Legal News - Class Action Lawsuit & Class Action Settlement News & Updates: Total Life Changes Hit with Class Action Over THC Representations for Raspberry Lemonade Instant Tea.)

Second, state courts can offer advantages to plaintiffs in terms of procedural rules and the potential for greater recoveries. For example, some states allow for substantial compensatory awards and do not cap punitive damages, making them attractive venues for plaintiffs seeking higher verdicts.

Cannabis product liability lawsuits have occasionally proceeded in federal court despite marijuana's continued classification as an illegal Schedule I substance under federal law. These cases remain relatively rare, and those that do advance are typically framed under federal statutes, such as RICO, and rely on legal theories that do not require the court to endorse or enforce cannabis use directly (for example, *Horn v. Medical Marijuana, Inc.*, 80 F.4th 130, 136 (2d Cir. 2023)).

For example, a judge in the Western District of Michigan recently declined to remand a lawsuit brought by cannabis companies challenging Grand Rapids' marijuana licensure fees. The court found that the claims raised a substantial federal interest and that the requested relief, enjoining a portion of a city ordinance, did not necessitate a violation of federal law. (*Fluresh v. City of Grand Rapids*, 2025 WL 3718770, at *3 (W.D. Mich. Jun. 17, 2025).)

Doctrine of Primary Jurisdiction

In the absence of specific formal guidance from the FDA, cannabis manufacturers and distributors may seek to stay product liability suits under the doctrine of primary jurisdiction. This doctrine allows courts to defer adjudication when a case involves issues that fall within the specialized expertise of an administrative agency. Courts consider several factors in applying the doctrine, including the risk of inconsistent rulings, whether the agency has already addressed the issue, whether judicial economy would be served by agency resolution, and whether the defendant could be subject to conflicting obligations. (4 Admin. L. & Prac. § 12:23 (3d ed.).)

For example, the Southern District of Florida granted a motion to stay a CBD labeling lawsuit, citing the FDA's recognized authority under the 2018 Farm Bill to regulate hemp-derived product. The court emphasized that the 2018 Farm Bill "explicitly recognized the FDA's authority to regulate . . . hemp-derived products" and "the FDA obviously has expressed an active interest in regulating the

manufacture and marketing of CBD products." (*Snyder v. Green Rds. of Fla. LLC*, 430 F. Supp. 3d 1297, 1307-08 (S.D. Fla. 2020).) However, because the doctrine of primary jurisdiction is applied on a case-by-case basis, a stay is not guaranteed. Courts may decline to defer if they determine that agency expertise is unnecessary to resolve the legal issues at hand (see *Ballard v. Bhang Corp.*, 2020 WL 6018939, at *5 (C.D. Cal. Sep. 25, 2020)).

Preemption

If the FDA promulgates comprehensive regulations for cannabis products, defendants may argue that state law claims are preempted under the Supremacy Clause of the US Constitution, which renders conflicting state laws unenforceable (*Mutual Pharm. Co. v. Bartlett*, 570 U.S. 472, 479-480 (2013) (citing U.S. Const., Art. VI, cl. 2)). Whether federal legalization or regulation of cannabis will ultimately reshape plaintiffs' strategies, and the viability of state-based product liability claims, remains an open and closely watched question.

Expert Strategy

The cannabis industry should be prepared to develop a stable of defense experts to defend against personal injury claims. Based on the types of injuries alleged to date, including cannabis-induced psychosis, as well as physical injuries such as burns or lacerations, defendants should prepare three main types of experts:

- Regulatory experts.
- Medical causation experts.
- Manufacturing engineers.

Regulatory Experts

Manufacturers of cannabis products should prepare witnesses to opine on adherence to the complex state (and any future federal) regulatory regimes governing the cultivation, sale, marketing, and labeling of cannabis. In recent economic class actions, failure to comply with regulatory regimes and enforcement actions formed the basis of claims regarding mislabeling the potency of marijuana products (see Lawsuits claim cannabis products violate Illinois law on limits for THC, Chicago Tribune, Jan. 31, 2025 (subscription required)).

Plaintiffs are likely to employ the same strategy in the product liability context and bring claims against manufacturers for injuries caused by the manufacturers' failure to follow industry-specific regulations.

When selecting a regulatory expert for a cannabis product liability case, defendants should prioritize individuals with practical experience working at a regulatory body, such as a state agency that governs marijuana usage. An expert with practical experience working for a regulatory body will be more likely to survive motion practice and demonstrate credibility to the jury on the question of whether manufacturers followed applicable standards in developing and marketing cannabis products. Even where a defendant chooses not to call a regulatory expert as a witness, working with these experts as consultants can help counsel develop cross examination material to challenge the plaintiff's experts. Plaintiffs' counsel face similar considerations when selecting regulatory experts.

Medical Causation Experts

In every product liability case, plaintiffs must prove both that the product:

- Is generally capable of causing the type of injury alleged (general causation).
- Did in fact cause the plaintiff's particular injury (specific causation).

For more information on proving general and specific causation in product liability litigation, see Practice Note, Product Liability Claims, Defenses, and Remedies.

In cannabis product litigation filed to date, plaintiffs have alleged a variety of injuries allegedly caused by marijuana use. In new cases, the most commonly alleged injuries include cardiovascular injuries, cannabis-induced psychosis, and burns or lacerations from exploding vaporizers (see Design Defect Claims and Anticipated Injuries). For each case type, parties should be prepared to offer both general and specific causation experts with medical expertise in treating the type of injury suffered by the plaintiff. For example, based on the uptick in cases alleging that high-potency marijuana caused psychosis and other mental health problems, parties may need to offer a psychiatrist as an expert to opine on whether cannabis:

- Can cause long-term psychosis at certain doses (general causation).
- Actually caused psychosis in the plaintiff (specific causation).

If cannabis is formally shifted to a Schedule III drug under the Controlled Substances Act, the availability of research funds, federal, academic, and private, is likely to increase, because:

- Regulatory barriers to research will lessen.
- Federal agencies will gain greater freedom to issue cannabisrelated grants.
- President Trump's Executive Order directs agencies to support and expand research infrastructure.
- Privatesector investment will become less risky.

To the extent rescheduling increases the volume and quality of cannabis research, the resulting scientific developments have the potential to meaningfully reshape the evidentiary landscape in cannabis product liability litigation.

Currently, courts evaluating causation, defect, and warning adequacy in cannabis cases often confront sparse or inconsistent scientific literature. With expanded federal and private research, for example, controlled clinical trials, toxicological analyses, and pharmacokinetic studies, and realworld evidence frameworks, experts are likely to gain access to more robust, peerreviewed, and methodologically rigorous data. This, in turn, could influence the admissibility and weight of expert testimony under *Daubert* or comparable standards, refine riskbenefit assessments, strengthen or weaken causation theories, and ultimately impact manufacturers' and distributors' exposure in product liability claims.

Manufacturing Experts

For design and manufacturing defect cases, defendants should be prepared to offer experts in the manufacturing and cultivation of cannabis to testify in support of the safety of cannabis product designs. These experts should have expertise in the process for cannabis cultivation and how the plant is prepared for commercial sale. These experts can provide opinions about how the product was manufactured according to best practices or show that alleged defects were not the result of the manufacturer's actions. The expert should be also prepared to opine on industry standards for quality control and testing in cannabis production.

Additionally, plaintiffs have filed cases against cannabis manufacturers for exploding or overheating vaporizers and failure to implement proper testing controls during the manufacturing process. In these cases, a mechanical engineer that works in the design and production of vaporizers can help manufacturers defend against allegations that the product was either improperly designed or manufactured.

Like any expert, the engineer should have specific expertise related to the product. Mechanical engineer experts have been disqualified through *Daubert* motions when they opine on defects outside of their specialized mechanical knowledge (see, for example, *Roe v. FCA US LLC*, 42 F.4th 1175, 1177-80 (10th Cir. 2022)). Ideally, a mechanical engineer should be prepared to opine on the safety and feasibility of convection, conduction, and battery-powered vaporizers (see Canatura: Blog: Vaporization: Guide to vaporizers and their types or all about vaporization (detailing types of vaporizers with various heating and dosage methods)).

Plaintiffs' Challenges

Given the current state of scientific research and the cannabis market landscape, potential plaintiffs face several challenges, including issues with product identification and difficulty establishing medical causation.

Product Identification

For plaintiffs to bring a product liability lawsuit against cannabis manufacturers, they must be able to identify the product and manufacturer. In the case of cannabis, where it is likely that a plaintiff has consumed products from multiple manufacturers, it may be challenging for plaintiffs to identify which products are at issue and where the cannabis was sourced. In these situations, plaintiffs' counsel may favor a market share liability model to assign liability based on each manufacturer's market share. "Market share liability provides an exception to the general rule that in common-law negligence actions, a plaintiff must prove that the defendant's conduct was a cause-in-fact of the injury" (*Hamilton v. Beretta U.S.A. Corp.*, 727 N.Y.S.2d 7, 18 (2001)).

However, not all jurisdictions recognize market share liability, and the difficulty in proving exactly which

manufacturer caused the plaintiff's particular injuries does not alone support the use of market share liability, even in courts that recognize the doctrine (*Hamilton*, 727 N.Y.S.2d at 19; *Brenner v. Am. Cyanamid Co.*, 699 N.Y.S.2d 848, 852 (4th Dep't 1999)). Courts have declined to extend the market share theory where products were not fungible and differing degrees of risk were created (*Hamilton*, 727 N.Y.S.2d at 20 (collecting cases)).

If plaintiffs attempt to use a market share liability theory in cannabis cases, defense counsel should focus on:

- Emphasizing the differences between their product and competitors' products.
- Opposing arguments that all cannabis is the same.
- Explaining how products undergo changes from the point of cultivation to consumption.

Tobacco cases are illustrative. In that context, courts have held that plaintiff smokers should be able to identify the specific cigarette brands they have used (*DaSilva v. Am. Tobacco Co.*, 667 N.Y.S.2d 653, 655 (Sup. Ct. N.Y. Co. 1997)).

Medical Causation

Plaintiffs' experts will have to pass *Daubert* and related state standards to offer opinions that the cannabis product in question caused the plaintiff's injuries. However, the science in this area is still developing. With limited data on the effects of cannabis on humans, plaintiffs may have to rely more heavily on animal studies. While animal studies can support legislative or regulatory actions, in the courtroom experts are generally required to extrapolate animal mechanisms to humans (see, for example, *Rider v. Sandoz Pharm. Corp.*, 295 F.3d 1194, 1202 (11th Cir. 2002)).

The necessity of extrapolation also applies to dose. The Federal Judicial Center's Reference Guide on Toxicology explains that the reliability of an expert's opinion depends on the strength of the underlying data demonstrating a relationship between:

- Exposure to the substance in question.
- The development of injury or disease at the dose in question and the presence or absence of other injury- or disease-causing or confounding factors.

(See Bernard D. Goldstein and Mary Sue Henifin, *Reference Guide on Toxicology*, 423 (2012).)

Defendants should understand the scientific basis of future claims and assess potential weaknesses that can make plaintiffs' experts susceptible to *Daubert* and related challenges.

Avoiding Discovery Pitfalls

Discovery in US product liability cases is often complex and time consuming, and cannabis-related cases should be no exception. Plaintiffs frequently rely on internal documents from manufacturers and sellers to support their claims. Failing to preserve and produce these documents**,** or doing so improperly, can lead to significant consequences, including monetary sanctions, the preclusion of evidence in the litigation, or even the entry of default judgment. Similarly, selecting and preparing an effective corporate witness is a priority for defendants in cannabis product liability litigation.

Best Practices for Document Retention

To mitigate these risks, cannabis companies should proactively manage their data and documentation, even before a lawsuit is filed. Companies should implement a comprehensive document retention program that includes a clear policy for the routine destruction of electronically stored information (ESI) and documents that:

- No longer serve a legitimate business purpose.
- Are not required to be retained under federal or state law.

Acquisitions are a common growth strategy among cannabis companies seeking to expand their market reach and gain access to additional resources. As part of the post-acquisition integration process, including aligning operations, systems, and personnel, the acquiring company should carefully review the acquiree's document retention policies to ensure consistency and, if necessary, bring them into compliance with its own standards.

For more information on creating and enforcing a document retention policy, see Records Management Toolkit.

Litigation Holds

When a lawsuit is filed or reasonably anticipated, the rules of civil procedure in both federal and state courts impose a burden to preserve all potentially relevant

records and information (for example, FRCP 37(e)). Companies should not delay in issuing a litigation hold to put key custodians of documents and records on notice that a certain scope of information must be preserved. Receipt of a pre-suit demand letter often serves as a trigger for issuing a litigation hold.

In implementing a litigation hold, it is initially important to identify the scope of what must be preserved and who must preserve it. Companies should think beyond the specific litigation claims. What may be deemed relevant in discovery can be broad (for example, Fed. R. Evid. 401). In the context of claims against cannabis companies, relevant documents could include, for example:

- Standard operating procedures or other product quality plans.
- Packaging and labeling documents.
- Regulatory submissions and other correspondence.
- Batch production records.
- Documents regarding inventory transfer, testing, and storage.
- Results of quality control and compliance testing.
- Marketing materials.

Individuals whose records are subject to a litigation hold may range from the highest executives of the company to manufacturing and warehouse employees. After confirming the scope of the hold, implement protocols for sources of those records to ensure material is preserved. For example, a litigation hold may require that any automatic deletion policies be suspended. Finally, follow up regularly to remind all affected employees of their obligation to abide by the litigation hold as long as necessary.

For more information about implementing litigation holds, see Litigation Hold Toolkit.

Managing Problematic Records

Many product liability cases involve at least one problematic internal document that plaintiffs' counsel may portray as an admission of fault or evidence of misconduct. One effective way to reduce the risk of such a document being created is through employee training. Employees should be educated on proper documentation practices, including avoiding unnecessary commentary in emails and other written communications.

Employees should also be cautioned against using sarcasm or irony, as tone and intent can easily be misinterpreted when documents are presented in court.

It is equally important to provide training on record creation. If an employee receives an email on a troubling issue (potential product contamination for example), the employee should document when and how the issue is addressed. Documents that articulate key decision points and the analysis behind company decisions can be instrumental in the defense against product liability claims.

Corporate Designee Depositions

Another common discovery tool is the deposition of company witnesses. Plaintiffs often seek to question the manufacturer's or seller's employees to gather information about the product in question. From a defense perspective, a well-prepared representative can serve as a compelling and credible witness, helping to convey the company's diligence in manufacturing, packaging, or marketing the product.

FRCP 30(b)(6) (and its state counterparts) allows a party to depose a corporate entity by serving a deposition notice on the entity that specifies the topics for examination. The organization must then designate one or more individuals to testify on its behalf regarding those topics. Defendants should identifying potential 30(b)(6) witnesses early in the litigation process and work closely with them to ensure thorough preparation.

The designee may be an officer, employee, former employee, or any other person that can testify about the noticed topics after a reasonable investigation. Each designee must testify about information known or reasonably available to the organization, even if no individual has personal knowledge of the matters. In these cases, the company must educate the designee using internal documents, interviews with knowledgeable personnel, and other available resources. (*Brazos River Auth. v. GE Ionics, Inc.*, 469 F.3d 416, 433 n.14 (5th Cir. 2006) (citing cases).)

If a 30(b)(6) witness is unprepared or unable to answer questions on a noticed topic, the organization may be barred from presenting evidence on that issue at summary judgment or trial (see, for example, *Wright v. Cleveland Clinic Fla.*, 2021 WL 8566739, at *4 (S.D. Fla. Oct. 12, 2021);

Strategic Decisions, LLC v. Martin Luther King, Jr. Ctr. for Nonviolent Social Change, Inc., 2015 WL 2091714, at *9 (N.D. Ga. May 5, 2015)).

Accordingly, counsel should allocate sufficient time to prepare the witness, including reviewing the deposition process, walking through each noticed topic, gathering and analyzing relevant documents, and conducting interviews with current or former employees as needed. When selecting a 30(b)(6) representative to testify on behalf of the company, look for someone who is knowledgeable, articulate, personable, patient, and willing to invest the time necessary to prepare thoroughly.

For more information about corporate designee depositions generally, see Practice Notes, Depositions: Taking a Rule 30(b)(6) Deposition and How to Prepare for and Successfully Defend a Rule 30(b)(6) Deposition.

Multi-Case Concerns and Litigation Management

To date, there have been no major mass torts involving cannabis-related personal injury claims in the United States. One probable explanation is that more established companies with substantial financial resources are not involved in the market. However, as cannabis and cannabis-adjacent products continue to gain popularity, and as new scientific research emerges, the legal landscape may change.

Multidistrict Litigation

One way to manage multiple product liability cases with common factual questions is through a multidistrict litigation, or MDL. MDLs are created for to coordinate pretrial proceedings through a single federal district court (28 U.S.C. § 1407(a)). In theory, an MDL conserves the parties' and courts' resources by promoting efficiency and preventing inconsistent pretrial rulings and duplication of discovery. MDLs are created by the Judicial Panel on Multidistrict Litigation (JPML). The JPML assesses multiple factors in creating MDLs. In general, the JPML is less likely to create an MDL where the nature of the cases is straightforward, the number of cases and parties are limited, and informal case coordination appears efficient. (Multidistrict Lit Man §§ 5:30 to 5:38.)

Roughly half the states have developed their own MDL-like procedural devices for state court proceedings, although the ways in which states handle consolidation, assignment, and case management vary, and they do not necessarily mirror the federal system (See Zachary D. Clopton and D. Theodore Rave, *MDL in the States*, 115 Nw. U. L. Rev. 1649, 1654 (2021)). No cannabis cases have been identified as appropriate for consolidation in a federal or state MDL to date, and the number of cases with common facts and injuries would likely need to increase dramatically before an MDL would be considered prudent.

Case Consolidation

Even where there are insufficient cases for an MDL or state-coordinated case, courts or parties may propose consolidated discovery or trials for a few plaintiffs for the sake of efficiency. Consolidated product liability trials generally pose a host of challenges for defendants, including that:

- Trials become more complex and time consuming.
- Evidence in one case can affect others, making it harder to isolate individual liability issues.
- Media attention increases.
- Defendants generally have to adapt their case strategy. Instead of focusing the defense argument on the preexisting condition of an individual plaintiff, or possible alternate causes of the injury, defense counsel is forced to focus more heavily on defending the company and common themes across all plaintiffs.

Consolidation is a strategic decision, not a procedural formality, and defendants should weigh its risks and benefits carefully in each case. For more information on consolidation in federal and state courts, see Practice Notes, Motion to Consolidate Under FRCP 42(a) and Consolidation, Joint Trials, and Severance Under New York Law.

Class Actions

Consumer fraud class actions currently pose a larger risk to the cannabis industry than coordinated or consolidated product liability proceedings. In 2020, around twenty putative class action lawsuits were filed in federal courts, mainly in California, Florida, Illinois, and Massachusetts, against manufacturers of hemp-derived CBD products, challenging the marketing and advertising of a variety of products (see Consumer Class Actions Involving Hemp-Derived CBD Products,

Cannabis Industry Journal, Aug. 18, 2020). While current class actions center on consumer fraud rather than traditional product liability, they highlight the critical importance of accurate labeling. These actions carry the potential for substantial damages, a risk that will only be heightened if interstate cannabis sales become legal and plaintiffs from multiple states could be included in one class action.

In recent years, misbranding and mislabeling have emerged as key class action litigation risks. For example, in December 2020, two class actions were filed against a hemp tea manufacturer, alleging that the company falsely advertised its product as containing zero THC (see ClassAction.org: Total Life Changes Hit with Class Action Over THC Representations for Raspberry Lemonade Instant Tea). In 2022, there was a rise in cases focused on potency inflation, accusing cannabis companies of overstating THC levels to justify higher prices (Class Action Complaint, *Centeno v. Dreamfields Brands Inc.*, No. 22STCV33980 (Cal. Superior Ct. L.A. Cnty. Oct. 20, 2022); Class Action Complaint, *Gallard v. Ironworks Collective Inc.*, No. 22STCV38021 (Cal. Superior Ct. L.A. Cnty. Dec. 6, 2022)).

In 2025, multiple proposed class actions were filed in Illinois against cannabis companies that manufacture and sell vapable oils. The plaintiffs allege that these companies deceptively market their products as smokable cannabis concentrates, when in fact they are cannabis-infused products subject to stricter THC limits under Illinois law. (Class Action Complaint, *Alsip v. Wellness Group Pharms LLC*, 2025 WL 801591 (N.D. Ill. Jan. 24, 2025); Class Action Complaint, *Martinez v. HDC Group LLC*, 2025 WL 801874 (N.D. Ill. Feb. 28, 2025); Class Action Complaint, *Holder v. Ascend Wellness Holdings Inc.*, 2025 WL 862700 (Ill. Cir. Ct. Feb. 3, 2025).)

Multi-Case Strategic Considerations

Defendants may find it more advantageous to consolidate multiple class actions rather than litigate individual cases, given the potential for greater procedural efficiency and consistency. In February 2025, about two dozen cannabis companies urged an Illinois federal judge to consolidate "nearly identical" proposed class actions alleging that the defendants engaged in mislabeling to get around state-mandated THC potency limits. Consumer plaintiffs, meanwhile, argued that containers that hold the cannabis oil and the label and packaging vary significantly, such that separate suits are required. To date, consolidation has been denied and multiple cases are proceeding on individual tracks. (See, e.g., *Rodriguez v. Cresco Labs, Inc.*, 2025 WL 3215872 (N.D. Ill., Nov. 18, 2025); *Matthews v. Cresco Labs, Inc.*, 2025 WL 1918581 (N.D. Ill. July 11, 2025).) Whether consolidation occurs in the future could significantly shape litigation strategy in similar cases, making it a development worth watching closely.

Settlement Considerations

A defendant considering whether to settle a cannabis product liability claim should evaluate several factors at various junctures in the litigation. None of these factors are unique to defendants involved in the manufacture and sale of cannabis products, but individual defendants may weigh these factors differently depending on the size and scope of their businesses:

- **Litigation resources.** Where a defendant has limited financial resources, early settlement may prove desirable, especially if counsel anticipates incurring significant costs litigating the dispute. Defending a case through trial may result in a hollow victory, where the defendant wins on the merits but at considerable financial cost.
- **Impact on productivity.** Defendants should consider the impact that litigation can have on its corporate employees if they must devote substantial time and other resources to litigation support. Employees can lose work time in identifying or reviewing documents potentially responsive to discovery requests, assisting in preparing discovery responses, or preparing for depositions or trial. All these factors can have a negative impact on the company's productivity.
- **Merits of the case.** Defendants should consistently assess the strength of the plaintiff's case throughout the course of litigation. If a plaintiff has strong evidence that a product caused them harm and significant potential damages, the risk of an adverse verdict at trial can weigh in favor of settlement. A large verdict in the plaintiff's favor could garner media attention and encourage future litigation. However, garnering a reputation as willing to settle early can also encourage new lawsuits, so there is a balance to strike in deciding when to settle a case. If a plaintiff's case is weak, and potential damages are relatively small, a defendant should consider taking the case to trial, as a

publicized defense verdict could discourage other plaintiffs from pursuing further litigation. Factors to consider in weighing the merits of a case include:

- the governing legal standards;
- findings in discovery, including fact witness and expert deposition testimony;
- witness credibility;
- the jurisdiction and the jury pool; and
- rulings on pre-trial motions, such as motions to dismiss, motions for summary judgment, and motions *in limine*.

Dispositive rulings in defendants' favor can provide opportunity for pretrial exit from a case. Even partial wins can strengthen a party's position in negotiating for settlement or, at minimum, can clarify what evidence will be admissible during trial.

- **Cost of protracted litigation.** Even when a plaintiff's case has flaws, there are costs associated with drawn-out litigation and risks associated with taking a case to trial. Litigation expenses increase quickly, and it is difficult to predict precisely how a jury may weigh certain evidence or witness testimony. Settlements can provide faster resolution and lower transaction costs compared to full litigation. A defendant may be saving money in the long run by settling early, even if it has to pay a large amount to end the dispute.
- **Publicity/commercial considerations.** The publicity associated with ongoing litigation or an unfavorable trial decision can adversely impact a defendant's company image and business prospects. Negative, ongoing press that impacts business prospects may be a reason to pursue settlement.
- **Settlement terms.** All settlement terms should be considered carefully, but confidentiality is usually particularly desirable for defendants. By keeping settlement terms confidential, defendants can prevent future plaintiffs from using the settlement as a precedent or basis for new lawsuits. However, some defendants may find it useful to publicize a settlement amount to put out a public marker on the value of the cases. If settlement values are low, it may discourage other parties from pursuing excessive demands in similar cases.

It is difficult to draw any general conclusions about the settlement value of cannabis cases because few settlements are made public, and claims and alleged injuries can vary. For example, Curaleaf publicly settled a lawsuit in January 2022 for $50,000, in a case where the plaintiff alleged that the company failed to warn customers that its CBD drops contained THC. Nine other similar lawsuits were settled at roughly the same time, although those settlements were not disclosed. In October of 2022, the company agreed to pay a settlement of $100,000 in a class action suit that alleged that the company failed to disclose that the CBD product contained substantial amounts of THC. (Complaint at 9, *Williamson*, No. 3:22-cv-782 at 9; see Top Class Actions: Curaleaf THC false advertising $100K settlement.)

In August 2024, four defendants agreed to pay a total of $650,000 to settle a wrongful death lawsuit in which the plaintiff alleged her husband died as a result of using Kratom sold or manufactured by the defendants (see Kratom Research Institute: Court Actions: Sweet v. E-Z Distribution, Inc.). In sum, settlement values hinge on a variety of factors, so public information may or may not be applicable to subsequent cases.

Finally, defendants should also consider taking steps to limit further lawsuits outside the settlement context. Working with counsel to conduct internal risk assessments to identify potential liabilities can help companies develop strategic mitigation programs to limit litigation exposure going forward or prepare the company to properly manage future cases.

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