

# WASHINGTON CASE UPDATE

case in point...

## Bad Ink: Does a Tattoo Artist Breach a Duty of Care When Using Contaminated Ink?

**From the desk of Kyle D. Riley:** Does a tattoo artist owe a duty of care to use sterile ink when applying a tattoo? Find out how the Washington Court of Appeals answered this question.

**Claims Pointer:** The Washington Court of Appeals held neither the regulations governing the tattoo industry, nor the common law impose a duty on tattoo artists to use sterile ink. The court emphasized plain statutory text as well as the lack of evidence that sterile ink was available, sterile claims were reliable, or that tattoo artists had the means to test contaminated or sterile ink.

*Chester v. Deep Roots Alderwood, LLC*, No. 73225-1-1, Washington Court of Appeals, Div. I (April 4, 2016).

Anna Chester (“Chester”) suffered a serious adverse reaction to contaminated ink after getting a tattoo by Bonnie Gillison (“Gillison”), a tattoo artist at Deep Roots Alderwood, LLC (“Deep Roots”). Gillison used One brand tattoo ink, a popular ink that she had used for approximately a year and a half without issue. She ordered the ink from Kingpin, a distributor from whom she ordered many supplies.

After applying Chester’s tattoo, Gillison learned that several clients were experiencing adverse reactions to the black ink portions of their tattoos. King County Public Health traced the reactions to a particular bottle of One brand black tattoo ink and further concluded that the contamination was during manufacture. While most of Gillison’s clients only suffered a minor skin irritation, Chester, was diagnosed with a bacterial infection and was prescribed antibiotics. The infection did not respond to the prescribed treatment and Chester experienced a rapid decline in kidney function. While an infectious disease specialist was ultimately able to successfully treat the infection, Chester experienced kidney failure and had to begin dialysis prior to the infection being brought under control.

Chester brought product liability and negligence claims against Gillison and Deep Roots. Gillison and Deep Roots moved for summary

judgment. Chester conceded dismissal of her product liability claims, but opposed the motion as to her negligence claims. The trial court granted summary judgment for Gillison and Deep Roots. Chester appealed.

The Washington Court of Appeals affirmed the decision of the trial court and held that Gillison and Deep Roots did not violate a statutory duty of care to use sterile ink because there is not a regulatory requirement to use sterile ink. The court also found that Chester did not establish that the parties’ duty of reasonable care required them to use sterile ink. According to the court, Chester failed to establish that Gillison and Deep Roots owed her a duty of care.

The court rejected Chester’s argument that Gillison and Deep Roots were negligent per se because they violated a statutory duty of care. Chester relied on two Washington statutes to support her argument that tattoo regulations require the use of sterile needles, sterile instruments and aseptic techniques at all times during a procedure. The court rejected this argument and found that the plain language of the regulation does not create a duty to use sterile ink. According to the court, sterilization, the type of ink to be used and the dispensing of ink were carefully considered in the regulatory scheme. Thus, it was unreasonable to conclude that the secretary of health, in adopting the relevant regulations, intended to require the use of sterile ink but couched that duty within the requirement to use sterile instruments and

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## The Encroaching Tree: Is a Duty of Care Owed to an Adjacent Owner When Removing Tree Roots or Branches?

aseptic techniques.

Chester also argued that Gillison and Deep Roots were negligent per se because the definition of "tattooing" within the statutory scheme for tattoo artists identified tattooing as using "nontoxic" dyes or pigments. Chester contended that Gillison and Deep Roots breached a duty to use nontoxic ink. The court rejected this argument, finding that the definition did not create a standard.

The court further rejected Chester's argument that Gillison and Deep Roots breached a duty of reasonable care by not using sterile ink or confirming the ink was not contaminated. According to the court, Chester did not show that sterile ink was available at the time in question, that claims of sterility were reliable, or that tattoo artists had the means necessary to test for contamination and sterilization on site. Therefore, she did not establish that the parties' duty of reasonable care required them to use sterile ink.

The Washington Court of Appeals affirmed the trial court's ruling dismissing Chester's negligence claims against Gillison and Deep Roots on summary judgment.

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