

TN Case Is a Clear Example of How Work Comp Kills People

This morning's [top headline in WorkCompCentral news](#) should be alarming to anyone who has been following the trend of prescription medication abuse in workers' compensation.

In *Kilburn v. Granite State Insurance Co.*, the Special Workers' Compensation Appeals Panel of the Supreme Court of Tennessee decided that Judy Kilburn should be allowed to amend her husband's workers' compensation claim to add a claim for death benefits.

Charles Kilburn, suffered neck injuries in a work-related auto accident in November 2008, and subsequently underwent a cervical fusion surgery. His treating neurosurgeon prescribed oxycodone.

Dr. William Leone, a pain-management specialist, examined Charles on Jan. 4, 2010, and noted that he was taking 15 milligrams of oxycodone four times a day. Leone recommended that the dosage not be increased. Charles overdosed on Jan. 28, 2010. The medical examiner's report showed that his blood contained 409 nanograms per milliliter of oxycodone. (Emphasis added.)

Judy Kilburn, Charles' widow, filed a motion to amend her husband's pending workers' compensation claim to add a claim for death benefits, but the Chancery Court of Williamson County denied the motion. The court stated that "Kilburn's negligent overdose of prescription pain medications breaks the chain of causation because it is an independent, intervening cause."

The Special Workers' Compensation Appeals Panel reversed, stating that there was insufficient evidence to rule in favor of the defendant. The court likened the Kilburns' case to *Shelton v. Central Mutual Insurance Co.*, a 2009 decision which also featured a claimant's overdose that was allegedly the "natural result of the original work injury."

The legal analysts see this case as setting a new standard for burden of proof in Tennessee - that part of the story I have omitted.

The value of this case is that it is a stark, and frankly disgusting, example of a) how workers' compensation disables people unnecessarily, and b) how workers' compensation kills people.

Robert J. Barth, PhD, in an article published in the March/April 2011 edition of the AMA Guides Newsletter, states:

"[S]cientific findings indicate that prescription narcotics are the leading cause of death among workers' compensation claimants who have undergone back fusions. This scientific discovery warrants emphasis. It indicates that prescription narcotics (in conjunction with workers' compensation and back fusions) are actually turning a non-life-threatening issue (back pain) into the number one cause of death. Equally noteworthy are the reports that poisoning deaths, primarily involving prescription medications (prominently including narcotics, which exceed the deaths caused by heroin and cocaine combined), have actually overtaken motor vehicle accidents as the top cause of death among middle-aged Americans." (Citations omitted.)

Nortin M. Hadler, MD, in his most recent book, "Stabbed in the Back", provides substantial evidence that neck and back pain, without corroborating physical findings beyond the routine disk bulge, is over-treated and supports an entire industry that creates more disability (and death) than if such cases were left to their own accord. Hadler cites an alarming increase in back treatment cases in the last decade, and a correspondingly alarming increase in the amount of disability during that same period, as evidence that we are a system out of control.

The Kilburn case highlights the conclusions of Barth and Hadler, and should be offensive to anyone in our industry. Without any doubt in my mind, Kilburn's overdose death IS the responsibility of the the workers' compensation system, IS the responsibility of the employer/carrier, and his widow MUST be compensated for his death.

Legal causation aside (and in most jurisdictions this would not even be contested), this is a social morality issue. Perhaps the auto accident did cause some neck pain - how did this neck pain get so far as to require surgery? Is there no responsibility on the system - on the employer, on the carrier, on the physicians - to counsel and educate Kilburn that surgery in the vast majority of cases DOES NOT WORK? That unless there is a broken bone, some displacement of anatomic features, surgery has a miserable success rate? That neck and back pain are a part of life and that there are alternatives to invasive procedures and hard-core narcotics?

Would Kilburn have chosen this line of treatment had he actually known that more people die from over-medication in workers' compensation cases than motor vehicle accidents? Would he have consented to surgery if he had know the terrible success rate of invasive spine procedures?

We don't know what Kilburn's co-morbidities were. We don't know what psycho-social factors engaged Kilburn into the work comp system, or how psycho-social factors played upon his perception of pain, or the motivations for the course his case took.

What I firmly believe is that if Kilburn had not made a workers' compensation claim, he likely would be alive today (absent some other intervening traumatic event).

How many other Kilburn cases are there right now, where a victim of workers' compensation is on the edge of death?

This case is a poster child for radical change in how we deal with pain and disability in our culture. We're killing our own work force. Isn't this what workers' compensation was devised to correct 100 years ago? We have strayed far from the concept's original intent.