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## Killed Western Md. miner's family to file \$4M lawsuit

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The family of a Western Maryland coal miner killed by 93,000 tons of fallen rock three years ago plans to file a \$4 million lawsuit Thursday against the mine's owner and operator, according to the family's lawyer.

Michael R. Wilt, 38, was crushed to death in April 2007 when a 275-foot rock wall collapsed while he was operating a bulldozer at the base of Tri-Star Mining Inc.'s surface mine in Barton.

The lawsuit, to be filed in Allegany County Circuit Court, will allege that George Beener, Tri-Star Mining's owner and operations supervisor, as well as engineers and safety-training personnel, willfully and recklessly kept the facility in unsafe conditions, said Keith S. Franz, the Wilt family's lawyer.

The \$4 million amount sought in the lawsuit reflects the pain and suffering sustained by Wilt, his wife and two daughters, as well as his lost future earnings, said Franz of Azrael, Gann & Franz LLP in Baltimore.

Dale Jones, a 51-year-old fellow miner, was also killed. Jones was operating a hydraulic excavator on the mine's surface.

"When a highwall like this fractures, it's quite loud. It takes some time for the material to reach the bottom of the pit," Franz said. "These miners recognized their own impending mortality and sustained considerable pre-impact and pre-death fear before they got buried underneath the boulders."

Wilt's widow, Tonya, and daughters, Nicole Hare and Anna Wilt, have endured not only emotional trauma but a financial burden, Franz said.

"He was a 38-year-old man who was supporting his family," the lawyer added. "They lost a lifetime of his earnings."



Lawyer Keith Franz is suing Tri-Star Mining Inc.'s owner for keeping the mine where Michael Wilt died in unsafe condition.



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Barton-based Tri-Star will not be named as a defendant in the lawsuit because under Maryland law a corporate entity's liability in a job-related injury or death is generally limited to worker's compensation, Franz said. Officers and agents of the company can be sued individually.

Tri-Star has paid a worker's compensation judgment to Wilt's estate, Franz said.

The company has also consented to a \$105,000 penalty from the U.S. Mine Safety and Health Administration for violations related to the wall's collapse.

A telephone message to Tri-Star seeking comment from Beener was not returned.

The filing of the complaint comes as the statute of limitations on bringing a lawsuit is set to expire in mid-June, Franz said. He added that the lawsuit's timing is not tied to the April 5 explosion at Massey Energy Co.'s Upper Big Branch underground mine in West Virginia, which killed 29 miners.

But the Tri-Star and Massey incidents "follow a similar pattern," Franz said.

"There are substantial and highly serious violations of the law that existed in both cases," he added. "If they [company officials] had simply used common sense, these tragedies would not have occurred, and common sense does not cost a dime. These dangerous conditions were known to exist, but they were ignored repeatedly in both cases."

The MSHA concluded that Tri-Star inadequately inspected the wall and had ignored indications, including cracks at the top of the wall, that previous underground mining had weakened the structure.

"The fatalities occurred because the ground control plan did not adequately address [the wall's] conditions, obvious hazards were allowed to exist, and an examination was inadequate," MSHA stated in its report on the collapse. "In addition, training did not make miners aware of the hazards introduced by previous underground mining."

In the Massey case, MSHA had repeatedly cited and fined the company for improper ventilation of methane and permitting combustible dust to accumulate, according to The Washington Post. Don Blankenship, CEO of Richmond, Va.-based Massey, has said the number of violations is in keeping with the national average, the newspaper reported.

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