

they'll want to put you in jail," Middleton added. "But this man – it's people's lives and injuries and then they just keep letting him keep doing it and doing it... Why are they not being punished?"

The Kentucky Darby explosion illustrates another finding from the NPR/MSHN investigation: even after major disasters with multiple deaths, delinquent mine owners can continue to operate and commit violations, often resulting in injuries.

While they had delinquent fines, Napier and his partners mined 1.4 million tons of coal, according to federal records. That's more than \$89 million worth, based on average prices in that part of Kentucky reported by the Energy Information Administration.

"They're just sticking their finger in the eye of the federal enforcement agencies," said Congressman Miller, "They continue to run and produce coal and make money." Mining companies can operate "with complete impunity," Miller said. "The current law isn't worth the paper it's written on."

Tony Oppegard, Middleton's attorney, said "Not paying the fines...perpetuates this whole system of lawlessness. If I don't have to pay a fine, what incentive do I have to provide a safe workplace?... I'm going to do it as cheaply as I can [and] cut as many corners as I can."

Tracy Stumbo, who spent 17 years as Kentucky's chief mine accident investigator, and investigated the Kentucky Darby explosion said, "It's almost unbelievable that you can have a horrendous accident such as Kentucky Darby, an explosion that would kill five people, and still the company would be able to still mine coal in the state of Kentucky and not pay their fines. And, you know, it's pretty hard to explain to the families why this continues to go on."

### **Third Highest Delinquent Controller is Billionaire James Justice**



*Billionaire James Justice is the controller of 71 mines that owe over \$2 million in delinquent MSHA penalties. He has donated \$30 million to various organizations.*

The third leading delinquent controller is West Virginia's billionaire James Justice owing \$2,148,401 for 71 mines, according to MSHA's figures for Sept. 30, 2014. Justice's fortunes, including his southern Coal Co., place him on the *Forbes* billionaire list with a net worth of \$1.7 billion, and according to *Forbes*, he boasts 1.4 billion tons of coal reserves.

While being on the top of the list for delinquent MSHA penalties for several years running, Justice purchased the Greenbriar Resort, hosts PGA championship tournaments, has put in a \$25 million training center for the New Orleans Saints, donated \$25 million to the Boy Scouts of America, donated \$5 million to Marshall University, and pledged \$10 million to the Cleveland Clinic.

The **NPR/MSHN** analysis of federal records through March of this year, shows that the delinquent Justice mines committed nearly 4,000 violations while they were delinquent; 1,300 citations were classified by federal inspectors as S&S; and more than 500 violations were the kind of violations that are common in mine disasters, accidents and deaths. Seven delinquent Justice mines were targeted for a dozen of MSHA's impact inspections that occur at mines which MSHA deems to have troubling safety records and

persistent violations.

The analysis using the government data found his company, Southern Coal, produced 9 million tons of coal at delinquent mines in the years it dodged its fines, according to federal records, with the coal worth an estimated \$500 million, based on average prices at the time for the states and regions involved.

Justice's office would not return phone calls, and would not speak with NPR, so NPR sought out Justice at a girls basketball game. Justice said he could not speak with NPR, but his COO Tom Lusk could offer any needed details.

Lusk claims that the company had paid MSHA \$500,000 toward's the company's delinquent fines, but that MSHA had failed to properly credit the payments. This still leaves more than \$1.6 million in unpaid fines. Lusk told NPR that "An operator that's going to maintain a safe operation is faced with a dilemma of what gets paid and doesn't," Lusk said. "And the unpaid fines and citations with Southern Coal have simply been not having the



*While owing delinquent penalties to MSHA, James Justice purchased the Greenbriar Resort in West Virginia.*

available cash to settle those. ... There's been no windfall in Appalachia. ... Today, all of the operations in Appalachia, I think, are struggling as far as profit margins compared to input costs." Lusk also said that the delinquent penalties don't compromise safety in Justice's mines.

While overall, the Justice mines combined have a better injury rate than the national average last year, and they've sharply cut their violations rate, according to the NPR/MSHN analysis, Justice's delinquent mines haven't done so well. Their injury rate for the last five years is more than twice the average rate, according to the review of federal data.

Lusk insisted that Justice will pay the delinquent fines, and after NPR/MSHN made it clear that Justice would be part of this series, he instructed Lusk to begin paying off his delinquent penalties at the rate of \$100,000 a month. Still, the vast majority of mining companies, including those in Appalachia, manage to pay their fines, and MSHA hasn't done with Justice what it has done with other top delinquent operators, which is to seek a federal court order for payment. MSHA said it hasn't gone to court because Justice's company does make some payments.

Justice companies also have hired contractors with some of the largest contractor delinquent penalty cases with MSHA.

### **Darrell Wagner and Wilcoal Mining Is 4<sup>th</sup> on List**

Darrell Wagner is fourth on the list of delinquent fines, with \$2,116,360 owed to MSHA as of Sept. 30, with another \$5,500 that was in the 1-90 day category of being delinquent. Wagner owns Wilcoal Mining in Bell County, Ky., and Solid Fuel Inc.

Wagner's oldest delinquent penalty dates back to Oct. 15, 2003 for \$314. MSHA has 110 cases with multiple delinquent penalties for each. Wagner's most recent mine purchase was Solid Fuel Corp.'s Watson Branch Mine. He became controller Jan. 3, 2012, and has not paid one penalty of the \$25,455 it owes in fines since he took over the operation. His mines have been targets

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TENNESSEE KNOXVILLE DIVISION		
SETH D. HARRIS, Acting Secretary of Labor, United States Department of Labor,	:	
Plaintiff	:	
v.	:	No.: 3:11-CV-455
	:	(VARIAN/GUYTON)
WILCOAL MINING INC.,	:	
Defendant	:	
 <b><u>AGREED JUDGMENT</u></b>  		
This matter came to be considered by the Court on Plaintiff's Complaint to enforce payment of civil penalty orders of the Federal Mine Safety and Health Review Commission and for a Permanent Injunction. The Secretary has alleged that the Defendant failed to or refused to comply with final orders and decisions of the Federal Mine Safety and Health Review Commission to pay civil money penalties that have become final orders issued under the Federal Mine Safety and Health Act (hereinafter the Mine Act) 30 U.S.C. §801 et seq.		
The parties have reviewed this Agreed Judgment and agree to its entry as evidenced by the signatures below of counsel for the parties.		
<b>IT IS THEREFORE ORDERED AND JUDGMENT IS ENTERED AGAINST DEFENDANT WILCOAL MINING, INC. TO:</b>		
(1) Pay for the principal amount of unpaid civil penalties (\$626,700.00) and administrative costs (\$620.00) owed to the United States for Mine Act violations, which were final orders of the Federal Mine Safety and Health Review Commission dating between November 1, 2006 and August 11, 2011 in an amount of \$626,700;		
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