

DERAILED

The Angel Palank Story

A Widow's Fight To Keep A National Railroad
Company From Getting Away With Murder

by Linda Marx

Because Miami police officer Paul Palank had an intense fear of flying, he took an Amtrak train to his family reunion in Washington, D.C. on the morning of July 31, 1991. His wife, Angelica, and two young children had arrived in D.C. earlier that week by airplane, and awoke before sunrise that day, eager to greet Dad at Union Station to start what they had planned to make a month-long vacation. As Palank's family prepared for his arrival, his train, the Silver Star, was traveling north at 79 miles per hour through Lugoff, South Carolina. It was 5 a.m. and Palank was fast asleep when suddenly a faulty mainline switch broke in two. Within moments, Palank's car derailed and smashed into nine parked freight cars. The force of the impact, which awakened Palank, crushed his chest. When Amtrak's rescue crew arrived 40 minutes later (rescuers had trouble finding the crash site), Palank already had died from internal bleeding.>>>

Though her husband had been dead for more than seven hours, it wasn't until Angelica "Angel" Palank arrived at the train station that afternoon that she learned something was wrong. She and her two children (son Josef, 4, and daughter Taylor, 10 months) waited and waited, but there was no sign of Paul.

"We stood around watching all of the people coming and going when someone said, 'That train derailed.' We were confused and alarmed, so we quickly rode down the escalator looking for the service desk," recounts Palank in her first in-depth interview about what would turn into a nine-year battle to avenge her husband's death. "I remember my son Joe asking what 'derailed' meant."

When Palank asked a clerk about the train from Fort Lauderdale, she was given an 800 phone number and directed to a pay telephone. "I kept dialing and it was busy," recalls Palank, now 41. "The kids kept asking where daddy was, and I was praying and trying to entertain them while I kept dialing." When she did get through she was transferred numerous times until finally, "I remember someone telling me the Miami Police Department had sent an officer to identify Paul's body in South Carolina," says Palank, a former Miami Police Department dispatcher who met her husband when she sent him to the scene of a burglary. "I was sobbing and horrified and trying to keep the children calm. My life was shattered within seconds."

After her husband's death, Palank says her life became a blur of chaos and confusion. The craziness started the moment she and her kids returned to their Cooper City home where they found members of the media camped on her doorstep.

"I was fearful I could die or go nuts because I was so upset all the time," says Palank, who began seeing counselors for depression, memory loss and vision problems brought on by the overwhelming stress. "I was a young mother who had lost her husband and had no concept something like that could ever happen to me. It just wasn't right. Things like that aren't supposed to happen."

Decisions about what to do with her life hovered over Palank like a summer storm cloud. Money was becoming an issue. Palank hadn't worked for several years while caring for the children, and while the couple had taken out a small insurance policy after the birth of Josef, that cash would eventually be exhausted. She had recently been named a city commissioner for Cooper City, but that paid just \$500 a month.

When Palank's sister-in-law Avis urged her to see a lawyer, she initially refused. The soft-spoken widow had enough to deal with, and didn't want to endure the pain of a lengthy lawsuit. But an unexpected phone call changed her mind. The call came from a doctor who had survived Paul's train wreck (which had killed eight people and injured 19). The doctor told Angel he'd tried to save her husband's life, but Amtrak's medical crew didn't arrive until 40 minutes after the crash.

"The derail was at 5 a.m., and there were no rescue people there until 5:40 a.m.," explains a tearful Palank. "Paul had crash injuries to the chest. This doctor did what he could, but it was an emergency situation and he needed supplies. I told the children their daddy died in his sleep because the truth was too painful for them to hear."

The reason for the delay, Palank learned, was that the dispatcher on duty gave the rescue crew faulty directions to the site. This dispatcher worked for CSX Transportation, the second-largest railroad company in the United States. CSX, a Jacksonville-based company which owns and operates all tracks in 23 states east of the Mississippi River (including all of Florida), charges Amtrak and other commuter authorities a fee to use its tracks. Through painstaking research and investigation, Palank would eventually discover that incompetent dispatchers were the least of the problems at CSX.

A TERRIBLE TRACK RECORD

Fueled by anger and a lust for justice, Palank contacted Chris Searcy, a nationally known trial lawyer with the West Palm Beach firm Searcy, Denney, Scarola, Barnhart & Shipley.



Officer Paul Palank (l), who met his wife Angel while on the job, was a happily married father of two until the Amtrak train he was riding crashed in South Carolina in 1991 (r).



Though warned by her lawyers, Chris Searcy (l) and Greg Barnhart (r), that she'd be in for a nasty legal battle, Angel Palank (center) was determined to expose CSX Transportation's negligence in the death of her husband.

"When Angel first came to meet me she was overwhelmed with grief," says Searcy. "She told me that this case must make her husband's death meaningful. She was clear that she needed someone who would not get cold feet and settle. She wanted to go all the way to the Supreme Court — no matter what."

Searcy and his partner, Greg Barnhart warned Palank: She was in for a long, tough fight, especially if punitive damages were to be considered. They told her that large, entrenched companies like Amtrak and CSX Transportation try to make plaintiffs' lives miserable in hopes they'd grow weary of the fight (except for an earlier \$2.5 million verdict, all cases in this accident were settled out of court).

But Palank was undeterred. "This was a battle for justice, not money. I was so filled with furor and emotional pain," she says. "This battle helped me work through that misery."

Palank's mission for retribution, which began in 1993 when Palank filed a complaint against CSX, would become an obsession for both her and her legal team. Palank would read all documents, attend depositions and question defendants, and eventually enroll in Nova Southeastern University Law School so she could better understand the case's machinations. In turn, Searcy and his team of lawyers and investigators would spend tens of thousands of dollars out-of-pocket on investigations and agency reports, as well as for fact-finding trips to the South Carolina crash site.

The team's discoveries left them flabbergasted: Records indicated that CSX had known for more than seven months that the faulty mainline switch which caused the train to derail in South Carolina was in need of repair. Records also indicated that an audit done by the watchdog Federal Railroad Administration (FRA) done back in 1987 showed gross deficiencies in CSX's staffing and inspection practices. They also learned that, approximately a decade prior to the accident, CSX had cut its track-maintenance spending in half to save about \$250 million a year (says attorney Searcy today, "A switch stand was installed backwards 11 years ago and nobody figured it out").

In addition, court documents revealed that management did not track whether employees were actually *performing* said

inspections. Furthermore, pre-trial depositions revealed CSX management knew but ignored the fact that the chief inspector for the portion of the South Carolina track involved in the accident was, according to Searcy, "chronically drinking whiskey" in his office when he was reporting himself to be on the road doing his job.

"The road master reported that he had done his inspections but we proved he was on vacation in Myrtle Beach on the date he said he inspected the tracks," Searcy says. "Although it was not brought into evidence, we learned the road master sat in his office on many occasions drinking Jack Daniels."

CSX denies the latter allegation. "This information is not true — it came from a deposition and was never entered into evidence," says CSX spokeswoman Cathy Burns. "It was never put in front of a jury."

Other evidence that *was* introduced to a jury: CSX operated with 100-year-old equipment; the road master's admission he routinely committed fraud on occasions when derailment damages didn't exceed \$5,000; and when workers were injured on the job, they were simply given paid vacations (CSX saved \$275 million a year through layoffs; it would take thousands more workers to properly fix and maintain the tracks around the United States).

"In sum, FRA reports prove the tracks are in deplorable shape and are only corrected after emergencies," says Searcy. "We have seen two decades of less-than-minimum maintenance."

He adds: "It's heartbreaking...accidents could have been avoided if there hadn't been so much financial cutback on the part of CSX."

BITTERSWEET VICTORY

Two years after filing her complaint, Palank finally had her day in court. After an eight-month trial in Broward, she was awarded \$6.1 million in compensatory damages. At a second trial in 1997 to determine punitive damages (the punitive phase endured a mistrial and subsequent three-month retrial), a Broward County Circuit Court determined CSX did not care about the enormous risks to which they were subjecting passengers. The jury considered awarding Palank as much as \$240 million in punitive damages — which would've been 10 percent of the \$2.4 billion CSX saved in cutbacks on track maintenance and inspection over the years. Ultimately, though, on the eve of the sixth anniversary of her husband Paul's death, the jury awarded Angel Palank \$50 million.

Broward Circuit Court Judge Arthur Franza upheld the jury's verdict, and in a 19-page order wrote: "This Court finds the evidence clear and convincing, sufficiently showing that the Defendant's conduct in breaching its duty was deliberate, reckless, willful and wanton, evincing a reckless disregard for the safety of passengers and the public at large. This behavior was tantamount to manslaughter."

After the Circuit Court verdict, CSX appealed to the Florida Supreme Court, but last spring the appeal was denied. At this point, Palank received her \$50 million judgment, but in June CSX made a desperate, last-ditch appeal to the U.S. Supreme Court, which is scheduled to make its ruling in October (see sidebar



Palank says the aftermath of her husband's untimely death has made her an "angrier, less playful and more serious person."

"Fighting The Good Fight"). Palank's lawyers anticipate that appeal also being denied.

But there is a bittersweet twist to this saga: While CSX was found at fault for the crash, CSX and Amtrak have an agreement under which Amtrak (or its insurance company) must pay the damages. Palank promises to make sure the matter is raised in Congress, which, of course, must appropriate much of Amtrak's annual budget. "Since CSX wants Amtrak to pay my punitive damages, I

will try and work against them," she vows. "CSX needs to feel the pain, they need to learn they are not above the law."

Even more disturbing is that, while Palank was awarded monetary damages, the Court never demanded CSX fix the problems with the railroad tracks.

"Our hearts go out to Angel, and we never said we were not liable for this accident," says spokeswoman Burns. "But we will have no policy change on whether or not the tracks are fixed. Moreover, we believe the verdict was excessive."

It would make sense if a judge could order CSX to increase the level of maintenance on its tracks so that no more lives would be put at risk, but that's not going to happen any time soon. "Under the law, we have no control over the railroads," says Searcy. "The law doesn't allow a judge to force them to fix anything. That's how our system works. Punitive damages are awarded by juries and allowed by judges so that it will not be economically feasible for the defendant to make the same mistake again. In this case, a federal law required CSX to pay a \$20,000 fine for the day of the accident — and that's all that is required of CSX."

EVERYONE'S AT RISK

U.S. News & World Report recently stated that a derailment occurs somewhere in the United States about once every hour. Locally, the most recent train incident occurred in Miami last March, when a line hauling heavy tank cars full of hazardous material derailed.

In South Florida, countless people from West Palm Beach to Miami use the rail system daily. The South Florida system includes four Amtrak passenger trains, the auto-train (out-of-state), and Tri-Rail commuters (in-state). And every mile of passenger track is maintained by CSX.

It has been seven years since Palank originally filed suit against CSX Transportation. This past April a general internal review by the FRA, the agency that regulates railroad safety, found deteriorating track conditions on many areas of the CSX rail system, including passenger trains, according to agency officials. Among the defects, inspectors found areas where the distance between the rails — the gauge — had spread wide enough to risk derailments, and "many areas of concern" such as marginal crosstie conditions, rail failures, worn rails, worn switches and water-saturated subgrades. This is the second time in less than three years that the agency has criticized the physical condition of CSX tracks. "Unacceptable," said CSX president Ronald Conway of the conditions. "Whatever is necessary to do, we'll do."

Angelica Palank, who passed the bar exam in 1997 and now is a lawyer, has made it her life's mission to see that he does. Much of her \$50 million award money is being used to start the Paul Palank Memorial Trust, a foundation to help victims like her, and to start an Internet service that will provide truthful information about the railway system. In the works already are plans to hire engineers to further challenge the "lies" told in court, and a public affairs program to warn potential rail passengers that neither CSX nor Amtrak were forced to make any improvements to the tracks as a result of her lawsuits.

In addition to honoring her late husband through her foundation, Palank finds solace in celebrating his birthday each year. Every February 16th she and the kids have a party for him with his favorite foods: steamed asparagus, boiled shrimp, grilled dolphin, parsley potatoes and coconut custard pie. Then they write him birthday cards and leave them on the nightstand of the master bedroom. And each year on the anniversary of her husband's death, Palank meditates in isolation. "I have memory problems from this whole thing and they get worse each year around the anniversary of his death," says Palank, who (along with both her children) is still in counseling. "I don't talk to people during the meditation period and when I come out of it after a couple of days, I feel better."

Palank often reflects on how much she's changed in the past nine years, and about her new role as a railway safety advocate. "I've become angrier, less playful and a more serious person," says Palank, who adds that she quit dating a year ago so she could devote all her time to the kids, and to her foundation. "But I'm also a much stronger woman. I will continue [Paul's] crusade through the foundation, as well as on my own. I'll never give up until I am assured there is rail safety in the U.S." ■

FIGHTING THE GOOD FIGHT

After the judgments had been rendered in the Palank vs. CSX Transportation case, the Florida legislature succumbed to the blandishments of industry lobbyists and passed a statute limiting punitive damages to one sum per incident. In Palank's case, this would have meant that only the first plaintiff of the dozens who were killed or injured could have even sought punitive damages. On one hand, this law could encourage speedy disposition of claims and a consolidation of claimants' actions into a single action. On the other hand, the \$50 million in punitive damages is a relative pittance to CSX — which has a net worth of nearly a half-trillion dollars. In fact, that \$50 million is just 20 percent of what CSX saved per year when it cut its track maintenance in half. Palank has traveled to Tallahassee repeatedly in attempts to have this law overturned, and promises she'll continue to do so until she is successful.

Also, in June CSX petitioned the U.S. Supreme Court (SCOTUS) for certiorari (legalese for having the highest federal court review the Florida Supreme Court's ruling), alleging the Florida jury gave Palank a punitive award because of a lawful personnel decision by CSX. Everyone familiar with the case, though, agrees that the jury handed down its award because, in the jury's opinion, CSX adopted a deliberate policy of putting passengers on its rails at risk of life and limb by severely cutting its maintenance. The odds of any particular case even receiving SCOTUS review on certiorari are less than five percent. And the Florida Supreme Court has a good reputation in this regard. Moreover, CSX's own view of its prospects may best be judged by the fact it paid the judgment before filing for review. Experts predict the Supreme Court will reject CSX's appeal later this month.