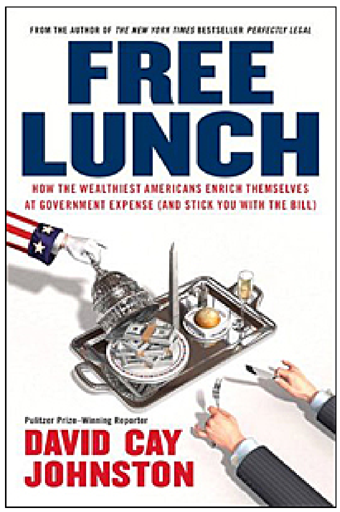
Author Uses SDSBS Case to Show Impact of 'Morally Hazardous' Government Policies That Reward Reckless Corporate Behavior

In Palank v. CSX, the fatal train wreck was caused by deliberate failure to maintain the tracks.

A wrongful death case filed by **Chris Searcy** and **Greg Barnhart** against CSX Transportation, Inc., has been featured in a book titled *Free Lunch* by David Cay Johnston. Johnston, a Pulitzer Prize-winning reporter for the New York Times, detailed the case in Chapter 3, "Trust and Consequences." Johnston discusses how "today's government policies and spending reach deep into the wallets of the many for the benefit of the few," often under the guise of deregulation. After years of appeals, the case collected $71.3 million in damages for the plaintiffs.



Eight people, including Paul Palank, a Miami Police sergeant traveling to a family reunion in Washington, DC, were killed in Lugoff, South Carolina, when an Amtrak train traveling from Miami to New York on tracks owned and maintained by CSX hit a faulty mainline switch causing the last six passenger cars to derail and slam into nine parked freight cars. Paul's widow, Angel Palank, asked Searcy and Barnhart to represent her in an action against CSX. "When Angel first came to meet me, she was overwhelmed with grief," said 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." The legal team's investigation revealed that CSX had minimized track maintenance for years in a cost-savings program, and that it had known of the faulty switch in South Carolina for over seven months but had failed to make the necessary repairs. Discovery also revealed that other tracks maintained by CSX were at risk of failing as well, due to the cutbacks and poor maintenance. By cutting track maintenance and repair spending in half over the 10 years prior to the accident, CSX had saved about $250 million per year. At trial, CSX had urged the jurors not to believe former employees who had testified as to the cutbacks in track maintenance. Barnhart countered with the argument, "CSX said, 'Why would we do that (not maintain the tracks)?' We said it was to save $2.4 billion."

The Broward County Circuit Court eventually found CSX liable for the accident and awarded Angel Palank and her two small children compensatory damages. A second trial was scheduled for determination of punitive damages. After several delays, the jury returned an award of $50 million in punitive damages. CSX filed an appeal to the Florida Supreme Court which was denied. The company then filed an appeal to the U. S. Supreme Court which was also denied.

Although CSX was found at fault for the crash, the company had an agreement with Amtrak that Amtrak would pay for any damages resulting from an accident. Since Amtrak is owned by the federal government, the cost of the judgments will be paid by the taxpayers. "Those who occupy the executive suite and gamble millions of dollars on the lives of others are rarely seen as engaged in morally hazardous conduct," continues Johnston. "Yet reward without risk is a form of moral hazard that blinds us to the consequences of our acts."

Author Johnston points out the final irony in Chapter 3 of his book. "Economists have a term for situations in which someone gets rewards but has little or no incentive to avoid risk: a moral hazard. The term is usually applied in insurance cases. A policy that covers every cent with no deductible may cause people to be less vigilant about husbanding their lives or property." Johnston further states, ". . . this case examines the moral hazard in a government policy that rewards reckless corporate behavior." Although CSX was found at fault for the crash, the company had an agreement with Amtrak that Amtrak would pay for any damages resulting from an accident. Since Amtrak is owned by the federal government, the cost of the judgments will be paid by the taxpayers. "Those who occupy the executive suite and gamble millions of dollars on the lives of others are rarely seen as engaged in morally hazardous conduct," continues Johnston. "Yet reward without risk is a form of moral hazard that blinds us to the consequences of our acts." ■