

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PAUL WUESTEWALD, )  
 )  
Plaintiff(s), ) No. C 02-3002 BZ  
 )  
v. )  
 ) **FINDINGS OF FACT AND**  
FOSS MARITIME COMPANY, ) **CONCLUSIONS OF LAW**  
SHORE TERMINALS LLC, )  
 )  
Defendant(s). )  
\_\_\_\_\_ )

Plaintiff seeks damages under general maritime law and the Jones Act, 46 U.S.C. §688, from defendants Foss Maritime Company ("Foss") and Shore Terminals LLC ("Shore") for injuries plaintiff sustained after he fell from a ladder while attempting to access the SAN PEDRO (the "vessel" or "barge"), a barge owned and operated by Foss, from Shore's dock. Having considered and weighed all the evidence and having assessed the credibility of the witnesses, I now make these findings of fact and conclusions of law as required by Fed. R. Civ. P. 52(a):

1 **I. FINDINGS OF FACT**

2 Plaintiff Paul Wuestewald, sixty years old, has been  
3 working in the marine industry for over thirty years, and  
4 as a tankerman for over 20 years. In 1996, he was employed  
5 by Foss as a certified tankerman. As part of his  
6 responsibilities, plaintiff loaded and unloaded bunker fuel  
7 at various terminals throughout the San Francisco Bay.

8 On October 16, 2001 Foss owned and operated the SAN  
9 PEDRO, a 186 foot-long barge inspected by the Coast Guard  
10 pursuant to 46 U.S.C. §3301. See Joint Ex. 14. The SAN  
11 PEDRO is a "bunker barge" employed to carry cargoes of  
12 bunker oil used as fuel for sea-going ships. Around the  
13 periphery of the barge's steel deck is a five inch high  
14 steel ridge called the "coaming" that is located twenty-  
15 four inches from the edge of the vessel. Around the edge  
16 of the barge is a hemispherical "slip rail" which protrudes  
17 about 6 inches from the vessel.

18 On October 16, 2001, defendant Shore owned and  
19 operated a dock at a fuel oil loading terminal in Richmond,  
20 California (the "dock").

21 On October 16, 2001, plaintiff was working on the SAN  
22 PEDRO loading bunker fuel at Shore's terminal in Richmond,  
23 California. He was its only crew member. By approximately  
24 5:40 p.m., the barge was fully loaded. Plaintiff returned  
25 to the dock to (1) check the draft lines, which measure how  
26  
27  
28

1 low the barge rests in the water,<sup>1</sup> (2) complete paperwork  
2 with Shore's personnel, and (3) return a radio earler  
3 given by Shore to plaintiff during the loading or unloading  
4 process.

5 Shore does not ordinarily provide a gangway or a  
6 convenient ladder to access its dock. It was the custom  
7 and practice of Foss tankermen to use a portable ladder to  
8 access the dock and Foss barges were equipped with ladders  
9 for that purpose. It was also their custom and practice  
10 not to tie off the ladder at Shore's terminal, principally  
11 because of the risks associated with having a ladder fixed  
12 in place on a barge that could move up or down. Captain  
13 Russell, who supervises the tankermen, admitted that there  
14 was nothing specific on the dock to which to tie a ladder.  
15 Three tankermen testified that they were unaware that a  
16 gangway was available upon request. It was undisputed that  
17 a gangway could be rigged to the SAN PEDRO.

18 The tide that evening was extremely low. After  
19 loading, the deck of the barge rested nine to twelve feet  
20 below the dock surface.<sup>2</sup> Consistent with his customary

---

21 <sup>1</sup> The parties disputed the necessity of returning to  
22 the dock to read the draft lines. According to the  
23 testimony of fellow tankerman and defense witness, Mike  
24 Higa, and defendants' expert, Captain Janecek, the draft  
25 could be read by laying across the deck, the coaming, and  
26 the slip rail and peering down over the side of the barge  
which is tied to the dock. I do not fault plaintiff for  
instead returning to the dock to read the draft lines. See  
Joint Ex. 35.

27 <sup>2</sup> The parties disputed whether this distance was 9  
28 feet, as defendants claimed, or 10 to 12 feet as plaintiff  
claimed. Several defense witnesses testified to a  
measurement taken long after the accident from which they

1 practice of accessing the dock, plaintiff braced the bottom  
2 of an aluminum ladder inside the side of the coaming facing  
3 the dock and leaned the ladder against the dock.<sup>3</sup> When  
4 plaintiff attempted to climb the ladder, it started to fall  
5 backwards because the angle was too acute. Plaintiff then  
6 moved the base of the ladder towards the center of the San  
7 Pedro and outside the coaming. I find that there was no  
8 suitable place against which to brace the ladder or to tie  
9 off the ladder at either end. Plaintiff climbed the ladder  
10 to the dock without difficulty and completed his tasks.  
11 Before descending, plaintiff tested the ladder with his  
12 left foot. The ladder felt secure. When he placed his  
13 right foot on the rung the ladder slipped from the bottom,  
14 causing him to fall approximately nine to twelve feet to

---

15  
16 concluded that the distance was approximately 9 feet. The  
17 court also received testimony about a 4 to 1 rule; for every  
18 4 feet a ladder rises it should be one foot from the wall.  
19 The testimony is undisputed that Mr. Wuestewald initially  
20 tried to brace the ladder against the coaming which is 2  
21 feet from the edge of the barge and that the barge was  
22 approximately 1 to 1 ½ feet from the edge of the dock, for a  
total of 3 to 3 ½ feet. He also testified that in this  
position the angle was too acute for him to safely climb the  
ladder. The 4 to 1 rule suggests that if the barge was only  
9 feet below the dock plaintiff would have had no trouble  
climbing up a ladder that was braced 3 to 3 ½ feet from the  
dock.

23 <sup>3</sup> The parties spent considerable time at trial  
24 disputing whether the ladder was twelve feet, fourteen feet,  
25 or sixteen feet. Plaintiff urges me to infer that the  
26 ladder was too short for its intended purpose from  
27 defendants' failure to preserve and produce the ladder.  
28 See Plaintiff's Supplemental Brief dated April 23, 2004, p.  
7. I decline to do so because plaintiff has failed to prove  
that it was the length of the ladder that caused it to slip.  
I am troubled that Foss delegates to its tankermen the task  
of deciding what length of ladder to purchase for the barge.

1 the deck of the San Pedro. No evidence was presented on  
2 what caused the ladder to slip.

3 The edge of the dock had two 12" by 12" wooden  
4 "stringers" separated from a cement curb on the dock by a  
5 twenty-four inch gap. There were no cleats or hooks  
6 affixed to the stringers to which a ladder could be tied or  
7 secured. A permanent steel ladder was affixed to the side  
8 of the dock approximately eighteen to twenty-four inches  
9 from and perpendicular to the side of the barge. To use  
10 the ladder, plaintiff would have had to step over both  
11 mooring lines and eighteen to twenty-four inch rubber  
12 fenders surrounding the barge and swing out over the water  
13 using one hand to grasp the ladder. It is undisputed that  
14 this is an emergency ladder and that the bottom rungs are  
15 slippery due to the presence of barnacles and moss.

16 Foss calls on several terminals in the San Francisco  
17 Bay Area and is aware of the customary use of ladders to  
18 access the docks. Foss never conducted systematic visits  
19 to these terminals to investigate conditions affecting dock  
20 accessibility or to verify the feasibility of following its  
21 own ladder safety guidelines.<sup>4</sup> It did not arrange for  
22 Shore to provide a gangway when needed or for Shore

---

23  
24 <sup>4</sup> Guidelines applicable to ladder safety are  
25 included in the Foss Tank and Barge Manual, which advise  
26 tankermen "[w]hen using ladders, make sure they are set  
27 securely, and *if possible*, attached or tied at the top..."  
28 Joint Ex. 32 (emphasis added). A Foss publication entitled  
"Slips, Trips, and Falls" also advises employees to "[h]ave  
someone hold the ladder at the bottom of [sic] added  
support", not a simple task on a barge with only one  
crewmember. Joint Ex. 26.

1 personnel to assist Foss personnel in accessing the dock.  
2 It did not ask Shore to provide cleats or hooks on the dock  
3 to which ladders could be tied. It provided no guidance  
4 for safe access by the tankermen other than what is stated  
5 in Foss safety manuals. Captain Russell testified that  
6 prior to the accident, he conducted regular safety meetings  
7 but never specifically addressed how to safely use ladders  
8 in dangerous circumstances, on the grounds that its  
9 tankermen were experienced.

10 Defendants argued they should be absolved from any  
11 liability because plaintiff was negligent in failing to (1)  
12 ask Shore employees to lower a gangway, (2) secure the  
13 ladder at the top to hoses on the dock or to a steel  
14 threaded bolt on the back of the stringers, (3) secure the  
15 ladder at the bottom to a cleat, (4) ask Shore personnel to  
16 hold the ladder or tie it off from the top before ascending  
17 or descending, (5) use a bucket to transfer required  
18 paperwork rather than delivering it personally, (6) wait  
19 for the tug crew to hold the ladder before accessing the  
20 dock, and (7) throw a line from the base of the barge up  
21 and through the twelve inch gap in the dock space and then  
22 grabbing the line with a rod and securing it to the ladder.

23 I decline to fault plaintiff for failing to employ  
24 many of the suggested alternatives. The majority are not  
25 included in Foss's Safety and Loss Manual or in its Tank  
26 Barge Operations Manual. Some involve greater risk than  
27 plaintiff's use of a ladder. Foss's suggestions were not  
28 provided to tankermen at the safety meetings conducted by

1 Captain Russell. They also fail to appear on the Coast  
2 Guard "Report of Marine Accident Injury or Death" completed  
3 by Captain Russell immediately following the accident. See  
4 Joint Ex. No. 16, p. 2.

5 Foss defends its policies on the grounds that it is  
6 impossible to instruct its tankermen on every imaginable  
7 hazard. Safe dock access and ladder safety, however, fall  
8 within the range of expected problems encountered when  
9 loading or unloading the barge. The effect of low tides on  
10 dock accessibility, while infrequent, is regular and  
11 expected. I do fault plaintiff, when faced with an  
12 unusually low tide which prevented him from bracing his  
13 ladder against the coaming, for not seeking assistance from  
14 Shore personnel, either to provide him with a gangway or to  
15 help him with the ladder. While Foss had not arranged for  
16 such assistance, Shore personnel testified that they helped  
17 when asked. I assign to plaintiff 20% of the fault for  
18 this accident.

19 The fall caused plaintiff to fracture his right heel,  
20 sustain a mild vertebrae compression fracture, and injure  
21 his right hip and hand. The pain in his hand has largely  
22 resolved since the accident, and his hip, back and foot  
23 pain are being treated with anti-inflammatory and pain  
24 medication, when necessary, at a cost of \$90.00 per month.  
25 As a result of his injuries, plaintiff has difficulty  
26 sitting for extended periods of time and can only walk for  
27 two to three blocks due to the pain in his heel. He is  
28 unable to grip heavy objects with his hands. Prior to the

1 accident, plaintiff enjoyed fishing, bowling, and playing  
2 with his grandchildren. He also performed various  
3 household chores, such as painting. His injuries now  
4 prevent him from participating in many of his customary  
5 activities.

6 I find that plaintiff will likely have to undergo  
7 surgery to fuse the subtalar joint on his right foot. I  
8 also find that having deferred the surgery thus far, it is  
9 not likely plaintiff will undergo the surgery in the next  
10 few years such that it would prevent him from working. I  
11 find that it is not likely that plaintiff will join a gym  
12 or health club as part of any treatment for his injuries.  
13 I find that plaintiff is not likely to have hip surgery to  
14 remedy his bursitis.

15 It is undisputed that plaintiff will be unable to  
16 return to work as a tanker man. I find he is physically  
17 able to perform some semi-sedentary work that permits him  
18 to alternate between sitting and standing, but will require  
19 some vocational retraining.

## 20 **II. CONCLUSIONS OF LAW**

21 Subject Matter jurisdiction exists over this case by  
22 virtue of the Jones Act, 46 U.S.C. §688, and general  
23 maritime law pursuant to 28 U.S.C. §1333. As a merchant  
24 seaman, plaintiff is entitled to the protections of the  
25 Jones Act and general maritime law.

26 Under the Jones Act, Foss has a duty to use reasonable  
27 care to ensure that plaintiff has a safe place to work.  
28 Havens v. F/T Polar Mist, 996 F.2d 215, 218 (9th Cir.

1 1993). To recover under the Jones Act, plaintiff must  
2 prove that the employer's negligence played any part, no  
3 matter how slight, in causing his injuries. Id.; Ribitzki  
4 v. Canmar Reading & Bates, Ltd., 111 F.3d 658, 662 (9th  
5 Cir. 1997) (describing "featherweight" causation standard  
6 for negligence under the Jones Act). Liability attaches  
7 only if the employer or its agents either knew or should  
8 have known of the dangerous condition. Id. An employer is  
9 charged with constructive notice if, in the exercise of  
10 reasonable care, it should have known about or discovered  
11 the alleged dangerous conditions. Id.

12 I conclude that Foss was negligent by failing to  
13 provide plaintiff with a safe means of access to and from  
14 the dock under the circumstances that existed at the time  
15 and place of his accident. Foss did not investigate  
16 conditions at Shore that affected dock accessibility at low  
17 tide despite its knowledge that tankermen routinely used  
18 ladders to access docks. It did not adequately train its  
19 employees in ladder safety, especially in dangerous  
20 conditions, or discuss specifically the various alternative  
21 access methods asserted at trial. By providing only a  
22 ladder, and not a ladder plus an additional precaution to  
23 ensure plaintiff's safety, such as an additional crewmember  
24 or arranging for a Shore employee to provide a gangway or  
25 hold the ladder, Foss's conduct fell below the standard of  
26 care and caused plaintiff's injuries.

27 Where a seaman's injuries are attributable, at least  
28 in part, to a vessel being in violation of a Coast Guard

1 safety regulation designed to protect the class of  
2 individuals to which seaman belonged and to prevent the  
3 type of injury suffered by the plaintiff, the vessel owner  
4 is negligent *per se* and a defense of comparative negligence  
5 is unavailable. Fuzek v. Royal King Fisheries, Inc., 98  
6 F.3d 514, 517 (9th Cir. 1996) (reversing district court's  
7 reduction in damages based on plaintiff's comparative  
8 negligence where injuries were caused by violation of Coast  
9 Guard regulation by vessel owner); Kopczynksi v. The  
10 Jacqueline, 742 F.2d 555 (9th Cir. 1994) cert. denied 471  
11 U.S. 1136, 558 (9th Cir. 1984); Smith v. Trans-World  
12 Drilling Co., 772 F.2d 157, 160 (5th Cir. 1985).

13 As an independent basis for Foss's negligence, I  
14 conclude that Foss violated Coast Guard regulation 46  
15 C.F.R. §42.15-75. This regulation, entitled "Protection of  
16 the Crew", requires vessels to provide "satisfactory means"  
17 of moving around the vessel during the performance of the  
18 "necessary work of the vessel." See 46 C.F.R. §42.15-  
19 75(d). The regulation specifically mentions a gangway, but  
20 not a ladder, as one of the enumerated "satisfactory  
21 means". Id. By not providing a satisfactory means of  
22 access from the barge to the dock, such as a gangway, Foss  
23 violated the Coast Guard regulation.

24 At trial, plaintiff established the elements for  
25 negligence *per se* under the Jones Act. Fusek, 98 F.3d at  
26 516 citing Smith v. Trans-World Drilling Co., 772 F.2d 157,  
27 160 (5th Cir. 1985). Defendants did not dispute the  
28 applicability of the Coast Guard regulation to plaintiff as

1 a tankerman. Entering and exiting the barge during the  
2 loading or unloading process is a central part of the  
3 "necessary work" of a tankerman. The purpose of the  
4 regulation is clearly to prevent falls and injuries while  
5 crewmembers are working. Foss offered no evidence which  
6 would excuse its failure to provide satisfactory access,  
7 other than contending that a ladder is "satisfactory" under  
8 the terms of the regulation. Reyes v. Vantage S.S. Co.,  
9 Inc., 558 F.2d 238, 243 (5th Cir. 1977) (failure to comply  
10 with safety regulations may be excused where non-compliance  
11 was due to an emergency situation, or where compliance  
12 would be more dangerous than non-compliance). Neither  
13 customary use of ladders by tankermen nor Foss's belief  
14 that ladders are safe excuses the violation that occurred  
15 here. Smith, 772 F.2d at 161. Had Foss provided  
16 satisfactory means of access, plaintiff would not have  
17 fallen and injured himself. Based on the foregoing, I find  
18 that Foss was negligent as a matter of law.

19 Under the "seaworthiness" doctrine, Foss has a non-  
20 delegable duty to provide a vessel that is reasonably safe,  
21 including work places, equipment, and access to and from  
22 the vessel. Mitchell v. Trawler Racer, Inc., 362 U.S. 539,  
23 549 (1960); Ribitzki, 111 F.3d at 664; Reyes v. Marine  
24 Enterprises, Inc., 494 F.2d 866, 869 (1st Cir. 1974)  
25 (seaworthiness extends to "the owner's duty to supply his  
26 crew with a suitable ship and equipment...[including a]  
27 suitable means to board and disembark. The duty thus  
28 extends to the gangway by whomever supplied, owned, or

1 controlled"); Sherfy v. Barge MARIN HORIZON, 76 F.Supp.2d  
2 1054, 1056 (N.D. Cal. 1999). The shipper must furnish a  
3 vessel and appurtenances that are reasonably fit for their  
4 intended use. Mitchell, 362 U.S. at 550. The shipowner's  
5 actual or constructive knowledge of an unseaworthy  
6 condition is not essential to its liability. Id. The  
7 employer is strictly liable if plaintiff can show that the  
8 unseaworthy condition played a substantial part in bringing  
9 about the injury. Faraola v. O'Neill, 576 F.2d 1364, 1366  
10 (9th Cir. 1978).

11 For the same reasons supporting a finding of Foss's  
12 negligence under the Jones Act, I find that the SAN PEDRO  
13 was unseaworthy. See Weeks v. Alonzo Cothron, Inc., 466  
14 F.2d 578, 581 (5th Cir. 1972) (finding breach of  
15 seaworthiness doctrine where shipowner failed to require a  
16 safety procedure to notify crew immediately that underwater  
17 worker was in distress).

18 Foss's violation of a Coast Guard regulation also  
19 renders the SAN PEDRO unseaworthy as a matter of law, but  
20 does not necessarily establish causation required to  
21 recover under his unseaworthiness claim. Smith v. Trans-  
22 World Drilling Co., 772 F.2d 157, 162 (5th Cir. 1985)  
23 (violation of safety regulation sufficient to trigger the  
24 "featherweight" standard of causation under Jones Act  
25 negligence, but not necessarily sufficient to trigger  
26 "proximate cause in the traditional sense" required to  
27 render a vessel unseaworthy). To establish causation under  
28 the seaworthy doctrine, plaintiff must show that the

1 unseaworthiness (1) played a substantial part in bringing  
2 about or actually causing the injury and that (2) the  
3 injury was either a direct result or a reasonably probable  
4 consequence of the unseaworthiness. Id.; Alvarez v. J. Ray  
5 McDermott & Co., Inc., 674 F.2d 1037, 1042-43 (5th Cir.  
6 1982); Cresap v. Pacific Inland Navigation Co., 469 P.2d  
7 950, 954 (Wash. Ct. App. 1970). Comparative negligence  
8 principles may act to reduce plaintiff's recovery under his  
9 seaworthiness claim. Knight v. Alaska Trawl Fisheries,  
10 Inc., 154 F.3d 1042, 1047 (9th Cir. 1998) (stating that  
11 "[m]aritime law has [] long applied the rule of comparative  
12 fault in a seaman's unseaworthiness action against a  
13 shipowner"); Phipps v. S.S. Santa Maria, 418 F.2d 615, 616-  
14 17 (5th Cir. 1969); Marine Solutions Services, Inc. v.  
15 Horton, 70 P.3d 393 (Alaska 2003).

16 I find that Foss's failure to provide a seaworthy  
17 vessel was a substantial cause and a direct result in  
18 causing plaintiff's injury. But for Foss's failure,  
19 plaintiff would not have been injured.

20 Plaintiff failed to establish a breach of a duty of  
21 care owed to him by Shore. A dock owner's duty to seamen  
22 using the dock is defined by the application of state law,  
23 and not maritime law. See Victory Carriers, Inc. v. Law,  
24 404 U.S. 202, 206-07 (1972) (stating that "the gangplank  
25 has served as a rough dividing line between state and  
26 maritime regimes" with piers and docks "deemed extensions  
27 of land"); Florida Fuels, Inc. v. Citgo Petroleum Corp., 6  
28 F.3d 330, 332 (5th Cir. 1993). Under California law, Shore

1 owes plaintiff a duty of care applicable to business  
2 invitees. See Cal. Civ. Code §1714 (2004) (liability for  
3 injuries to another caused by failure to exercise ordinary  
4 care). This duty obligates Shore to provide a dock that is  
5 reasonably safe and to warn of hidden dangers known to the  
6 owner and not reasonably apparent to the invitee. Id.;  
7 Freeman v. Nickerson, 77 Cal.App.2d 40, 48 (1946).

8 Plaintiff did not present any evidence that the dock was  
9 inherently unsafe, or that Shore failed to warn of a hidden  
10 danger. Shore did not have a duty to assist plaintiff or  
11 to provide a safe means for accessing its dock from the  
12 barge. Even assuming that Shore breached a duty, plaintiff  
13 did not establish that the breach was the proximate cause  
14 of his injuries. It is undisputed that plaintiff was not  
15 injured while on Shore's dock, but when the ladder slipped  
16 on the deck of the barge. There was no evidence that the  
17 ladder slipped because Shore's dock was defective. In the  
18 absence of a breach of Shore's duty, or a causal connection  
19 between a breach and his injuries, I find that Shore was  
20 not negligent. I find that plaintiff did not establish  
21 Shore's breach of the implied warranty of workmanlike  
22 performance. Ryan Stevedoring Co. v. Pan-Atlantic S.S.  
23 Corp., 350 U.S. 124 (1956); Sims v. Chesapeake and Ohio  
24 Railway Co., 520 F.2d 556, 561 (6th Cir. 1975).<sup>5</sup> Plaintiff

---

25  
26 <sup>5</sup> In Sims the Sixth Circuit stated that "[t]he  
27 nature of the services performed by the wharfinger  
28 determines the extent of this warranty...The implied  
warranties of a wharfinger relate to the conditions of  
berths and the removal of dangerous obstructions or giving  
notice of their existence to vessels about to use the

1 did not offer sufficient evidence of a contract, either  
2 express or implied, between Shore and Foss which gives rise  
3 to a duty of workmanlike performance, such as an obligation  
4 by Shore to assist Foss tankermen during loading. In fact,  
5 Shore employees testified that Shore did not require them  
6 to assist Foss tankermen during the loading or unloading  
7 operation. Unlike Chisholm v. UHP Projects, Inc., 205 F.3d  
8 731, 733 (4th Cir. 2000), upon which plaintiff relies,  
9 plaintiff was not injured by a third party brought on board  
10 the vessel who created a dangerous condition that caused  
11 the injury.

### 12 **III. DAMAGES**

13 Having concluded that Foss was negligent and failed to  
14 provide a seaworthy vessel, I award plaintiff \$835,236.00  
15 in damages calculated as follows:

16 (1) \$75,000.00 in general damages for past pain and  
17 suffering plus prejudgment interest pursuant to 28 U.S.C  
18 §1961(a) from the date plaintiff filed his complaint;

19 (2) \$175,000.00 in general damages for future pain  
20 and suffering;

21 (3) \$216,011.00 in past economic losses through April  
22 2004 less \$25,000 already received by plaintiff from Foss,<sup>6</sup>  
23 plus prejudgment interest pursuant to 28 U.S.C §1961(a)  
24 from the date plaintiff filed his complaint. This figure

25 \_\_\_\_\_  
26 berths...A wharfinger also owes a duty to furnish a safe  
means of egress and ingress to berthed ships." Id.

27 <sup>6</sup> The parties stipulated at trial that Foss shall be  
28 credited \$25,000 for any judgment awarding plaintiff past  
economic losses.

1 represents lost wages through April 2004 based on Dr.  
2 Ogus's Case I-B, Alternative II report. See Joint Ex. 21;  
3 (4) \$360,885.00 in future economic losses commencing  
4 in May 2004 based on the assumption that plaintiff will  
5 begin part-time work in July 2004 and work until age 66.  
6 (5) \$2,340 in future vocational retraining;  
7 (6) \$31,000 in future medical costs for the  
8 anticipated surgery on his ankle and for medication.

9

10 Dated: May 11, 2004

11 /s/ Bernard Zimmerman  
12 Bernard Zimmerman  
13 United States Magistrate Judge

14 G:\BZALL\BZCASES\Wuestewald\PRETRIAL\findings.wpd

15

16

17

18

19

20

21

22

23

24

25

26

27

28