

United States District Court  
for the  
Southern District of Florida

Lori Lucas, Plaintiff, )  
)  
v. ) Civil Action No. 19-20914-Civ-Scola  
) **In Admiralty**  
Royal Caribbean Cruises, Ltd., )  
Defendant. )

**Verdict and Order Following Non-Jury Trial**

Plaintiff Lori Lucas, through this maritime personal injury action, seeks damages from Defendant Royal Caribbean Cruises, Ltd., (RCC) for injuries she sustained when she fell while ice skating aboard the *Harmony of the Seas* on March 9, 2018. Lucas maintains RCC's negligence resulted in another passenger's colliding with her, while he skated backwards, which caused her to fall and seriously fracture her tibia and fibula, requiring surgery. Lucas has included three counts in her amended complaint: (1) negligent supervision of the ice rink; (2) negligent failure to implement or enforce safety policies; and (3) negligent failure to train crewmembers. (Am. Compl., ECF No. 6.) RCC counters, in short, it was not negligent for allowing backwards skating and that the dangers and risks associated with ice skating are open and obvious. The issues to be determined at trial, then, were whether, and to what extent, RCC was liable for Lucas's damages and, if so, the amount of those damages.

The Court held a three-day, non-jury trial, beginning on May 27, 2020.<sup>1</sup> Prior to the trial, the parties submitted a joint pretrial stipulation (ECF No. 47),

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<sup>1</sup> The entire trial in this case was conducted virtually, by videoconference and without issue. This relieved the litigants and many witnesses from the burdens of expensive and inconvenient travel to Miami. For example, the Plaintiff and her husband did not have to travel from Canada; the Plaintiff's expert did not have to travel from Connecticut; and the Defendant's expert did not have to travel from Tampa. Conducting the trial remotely also allowed the surgeon in this case to testify from his office in Broward, saving him a half day of traveling and waiting to testify in Miami. The Court highly recommends conducting hearings and nonjury trials using a virtual platform. There are many advantages and few downsides.

as well as their proposed findings of fact and conclusions of law (ECF Nos. 79, 89.) The parties also submitted eight witness depositions in lieu of their live testimony. The Court has carefully reviewed these submissions in addition to the trial testimony and evidence. After considering the credible testimony and evidence, and the applicable law, the Court finds that RCC is not liable for Lucas's injuries under maritime law. As a result, the Court finds in favor of the Defendant on counts one, two and three of the amended complaint.

## **1. Summary of the Testimony**

### **A. Lori Lucas**

Lori Lucas is from a small town in Canada about forty-five minutes outside of Toronto. She is fifty-two-years old and has a psychology degree. She is not working now but has worked over her adult lifetime. She has been married for seventeen years and has two children, ages sixteen and fourteen.

Prior to this incident, Lori had never sustained any injury to her left leg or ankle and had no debilitating injuries of any kind. Prior to the cruise, she was in pretty good shape. She went to the gym several times per week, took yoga and exercise classes and was otherwise active. She ran on the treadmill and outside when the weather was good. She liked to hike on trails and skate on ponds or at rinks.

Lori has skated her entire life, figure skated as a child, and continued to skate several times every year on ponds and at rinks. She would describe her skill level as competent. She is able to skate backwards. Her husband, Chris, is an excellent ice skater.

Lori and her family went on a week-long cruise which started and ended in Ft. Lauderdale. Her sister and sister's family also traveled on the cruise. The cruise visited Jamaica, Mexico and a third location she cannot recall. They hiked up to Dunn's Falls and did snuba diving (a cross between snorkeling and scuba diving) without a problem.

After watching an ice-skating show on the ship one evening, her family decided to go ice skating the next day.

Earlier in the cruise, her son wanted to use the FlowRider. Lori signed a waiver on March 5, 2018, which included the chosen activities of rock climbing, ice skating, FlowRider and ZipLine. The family did go ziplining but did not go rock climbing and did not plan on ice skating at that time.

On the day she was going to go ice skating, she was told she did not need to sign a waiver form because she had already done so. Lori claims she did not

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read the language on the waiver form relating to ice skating. But, Lori agreed to the terms of the waiver form by signing the form electronically. That form set forth the rules such as always keep moving, avoid other skaters, do not skate against traffic, persons ahead of you have the right of way, do not skate faster than conditions permit, no tricks, jumps, weaving or horseplay, no carrying children or other items. The waiver also informed Lucas in capital letters that "ICE SKATING IS A HAZARDOUS ACTIVITY, WITH INHERENT DANGERS THAT NO AMOUNT OF CARE, CAUTION, INSTRUCTION OR EXPERTISE CAN ELIMINATE." The form also advised her that the ice is very slippery, that "ice skating may involve falls upon the ice, collisions with other skaters, objects or structures, and may be therefore considered a hazardous activity."

Since she had figure skated as a youth, she chose to wear figure skates that day. Her family was the first family in line. Her husband, Chris, was wearing a GoPro camera on his helmet.

There were three staff members at the rink: two women upstairs checking people in and one man downstairs next to the rink handing out equipment.

The incident occurred about 10 to 12 minutes after she started skating. The rink seemed crowded since it was such a small surface. She had not noticed anyone skating backwards at any time while she was skating. While she was skating, she heard no announcements from the crew to people on the ice surface. She also did not see any staff members on or near the ice.

She described her own skating as calmly going around the rink. There were children chasing each other and weaving in and out. She decided to get off the ice. Before she could get to the exit, she heard a metal "ting" at the back of her skate, felt very slight contact to at the back of her skate, and fell. She heard her bone cracking when she fell. She did not know another skater was getting close to her just prior to the incident.

Seeking help, her sister went to the gentleman sitting at the desk handing out the equipment, and he came onto the ice approximately 40 seconds after the incident. Lori was in excruciating pain and lost consciousness at one point. She was carried off the ice.

She did not see her husband's GoPro video until she returned to Canada. She did not know the identity of the man whose skate collided with hers.

After the incident, Lori was first placed into a chair and then a wheelchair and was eventually taken to the medical facility on the ship. There were at least two doctors at the facility.

The doctors took X-rays and appeared to disagree on how to set her leg. She was given pain medication, but the doctors told her the pain would still be severe. They removed her skate, manipulated the leg, and put a splint on the leg.

She was wheeled back to her room where she stayed until disembarking the ship the following morning. An ambulance took her to the hospital, and she had surgery later that same day with Dr. Landes. The surgery was on Saturday, and she stayed in the hospital until Wednesday. When she was discharged, she flew to Canada on a flight with extra legroom. She used a walker and wheelchair to travel to and from the airport.

For the first couple of days upon returning, she stayed at her sister's house, so her sister could care for her. She then saw doctors in her town for follow-up care.

For the first two months upon her return to her two-story home, she remained mostly in her living room. She went upstairs to shower but needed help getting up and down the stairs and showering. She could not put weight on the leg for about six months. Her treating orthopedic doctor was Dr. Alli. She was told to meet with a physical therapist to see if she could participate in any non-weight-bearing activities. In mid- or late-August 2018, she began physical therapy. Before that, she could not tolerate weight-bearing activity. Eventually, the physical therapy worked. She used a walker until October when she began walking with a cane. She was told that she did not need any more physical therapy and could keep working out in the gym. It took over a year to be able to go down a set of stairs normally. She is now able to walk without a cane, but she still loses her balance on a regular basis. She usually walks without a limp but on bad days, she does have a limp. Bad days usually come on cold, wet days. She has not skated since this incident and will never go skating again. She is not able to help her son practice soccer.

She uses the elliptical machine every morning for 30 minutes, but she cannot do the yoga or aerobics classes. Nor is she able to run. Before this, she ran on the treadmill most days.

In April 2019, she traveled with her family to Orlando and spent four days at the different amusement parks. She was able to walk without assistance during that vacation.

Lori still has conspicuous scars on her left leg from the surgery. There are times when the pain is mild and other times when the pain can become severe. She has had to curtail family activities because of this injury. She often wakes up two to three times per night due to pain to put herself into a different sleeping position. Every morning she wakes up with some pain.

According to mortality tables her life expectancy is 28.3 years.

## **B. Christopher Lucas**

By agreement of the parties, the testimony of Christopher Lucas was presented by deposition taken on March 10, 2020. Christopher and Lori have been married for eighteen years, and they reside in Canada.

Christopher accompanied Lori on the cruise with their two children. On the day of the incident, the family decided to go ice skating on the ship after breakfast at 10:00 or 10:30 a.m. Christopher has ice skated his entire life and still plays recreational ice hockey. Lori has skated since she was four, and both are able to skate backwards. There is an on-line check-in process to fill out forms for ice skating on the ship, and after completing it he was told, "head down the stairs to get your skates and helmet."

He and Lori had gone ice skating on public rinks between five and ten times over the years. Their two children were also good skaters and did not need assistance in skating. His brother-in-law, sister-in-law, and two nieces were also skating at the time of the incident.

As he was skating on the rink, Christopher heard a scream from behind and turned around and saw his wife lying on the ice. He went to assist her. She was screaming, "it's broken." He did not see what caused her to fall, but he later watched a GoPro video he recorded and saw a man skating backwards clipping Lori's skate and sending her to the ice.

Christopher sent his sister-in-law to look for help and she returned about two minutes later with one of the individuals from the ship who was handing out skates.

A wheelchair was eventually brought to the rink to transport Lori to the on-board medical center, but it took a while for it to arrive. At one point, Lori lost consciousness. At the medical center the doctor took X-rays, and Christopher was asked to accompany security back to the rink to explain how the accident occurred.

The accident occurred on the final full day of the cruise. Lori was taken to the stateroom after being discharged from the medical center and she remained in the room until the ship docked the next morning. Upon disembarking in Ft. Lauderdale, she was taken to a hospital where she was re-examined and scheduled for surgery. She had surgery in Ft. Lauderdale on Saturday, and she remained in the hospital until Wednesday. After she was discharged from the hospital, she and Christopher flew back to Canada.

## **C. Enni Timila Kumari Shrestha**

By agreement of the parties, Timila's testimony was presented by deposition taken on October 20, 2019. Timila is an Ice Captain for RCC. She was

a member of the national ice-skating team of Finland for many years. She also toured Europe performing with *Holiday on Ice* for several years prior to working for RCC. She had given many lessons in figure skating but had not operated a public ice-skating rink. The rink on the ship was much smaller than the Olympic-sized or regular-sized rinks on which she had skated.

Timila received training for the All Skates sessions on the ship. The rules she learned are: no electronics on the ice, no cell phones, no horse play, no playing tag, no tricks like jumping or spinning, no skating too fast, and always wear a helmet. You can hold hands with one other skater but not multiple skaters. Every skater must skate in the same direction. If a skater is not following the rules, an announcement is made on a microphone. There is one microphone upstairs at the waiver desk and one downstairs at the equipment desk. There is music playing during the skating but when the microphone is used, the music stops.

Three people work in Studio B before the skating sessions. One person is upstairs to make sure the safety waiver is completed; one person is downstairs to distribute and ensure use of the helmets; and one person is a runner to go wherever he is needed to help the guests. All three are responsible for watching the ice. The person who hands out the skates and the person who hands out the waiver forms are also supposed to watch the ice.

After the guests fill out the safety waiver, they go downstairs to pick up the skates and helmet.

Skating backwards is not, in and of itself, dangerous. It is safe to allow skaters to skate backwards. There was no rule against skating backwards.

RCC limits the number of skaters to fifty-five for each thirty-minute session.

On the day of the incident, March 9, 2018, Timila was the supervisor on call. She was not present at Studio B. There was no safety video shown to guests on the *Harmony* but there was a safety video shown on the *Adventure*.

#### **D. Irina Movchan**

By agreement of the parties, the testimony of Movchan was presented by deposition taken on December 9, 2019.

Movchan was the national figure skating champion of Ukraine and moved to the United States in 2010 to better prepare for the world and European championships.

Movchan started working for RCC in early 2016 as a performer and assisting in the public skating sessions. She first worked on the *Mariner of the Seas* for five months, then on *Adventure of the Seas* for six months and then



*Harmony of the Seas* for six months until April 2018. As part of her training she shadowed other employees and watched what they were doing.

There were always three people assigned to the rink during the All Skates sessions and no specific person was assigned to watch the ice. All three were supposed to watch the ice.

Movchan was assigned to work at the rink during the time of the incident but has no specific recollection of the incident.

Movchan used the two microphones to enforce the rules and to stop people from skating too fast, from going in the opposite direction and from skating backwards. Skating backwards for the guests is dangerous because they don't have balance like a professional and could fall and hit their head.

If she saw someone skating backwards, she would tell them they were not allowed to skate backwards. Almost every session they would have to tell a guest to stop skating backwards.

#### **E. Joseph Mujwitt**

By agreement of the parties, the testimony of Mujwitt was presented by deposition taken on February 26, 2020.

Mujwitt has been the RCC director of loss prevention since 2014. The do's and don't's of ice skating are not contained in RCC's standard operating procedures.

#### **F. Santonio Johnson Carter**

By agreement of the parties, the testimony of Santonio Carter was presented by deposition taken on March 8, 2020.

Carter has been the stage manager on the *Harmony of the Seas* since the ship was placed in service in 2016.

Carter reviewed a safety video shortly before his deposition, but he had never seen the video before that day.

Carter was assigned to work in Studio B and was involved in the ice shows. His main duties involve the lighting, sound and ice.

Carter was not generally involved in the All Skates sessions. Carter was unaware of any requirement to play a safety video prior to the All Skates sessions in 2018.

Part of Carter's job was to supervise the All Skates sessions, but he did not have to be personally present during the supervision.

### **G. Martin Nickel**

By agreement of the parties, the deposition of Nickel was presented by deposition taken on March 6, 2020.

Nickel was a competitive figure skater growing up, and when he finished his undergraduate studies in 2017, he took a job as an ice skater for RCC on the *Harmony of the Seas*. He worked there until March 2018 on a nine-month contract.

Nickel performed in the ice shows and monitored the public ice-skating sessions. On the day of the incident, Nickel and Anastasia handed out skates and a third person, Irina, handled waivers. Typically, one person was assigned the waivers and one the skates and the third person was a runner who would go back and forth to help whomever was busier of the two. During his time on the *Harmony*, Nickel worked seventy to eighty skate sessions.

Skating backwards is only dangerous if you skate recklessly.

Nickel was at the skate desk when a guest informed him of Lori's injury. Nickel was ten to fifteen feet from Lori. Nickel did not see anyone crash into her. The incident happened at 10:45 which would have been in the middle of the session. Nickel was not monitoring the rink at the time and doesn't know if anyone else was monitoring the rink. He had been monitoring the rink at some point before.

Generally, the skill level of the guests skating was beginner to intermediate. Since skating is a risky sport, you could argue all the guests should just be standing still on two feet -- that would minimize all the risks.

### **H. Ken Rush**

By agreement of the parties, the testimony of Rush was presented by deposition taken on February 18, 2020.

Rush has worked for RCC for thirty-five years and is now the Director of Entertainment Operations.

Twelve of the RCC ships have ice-skating rinks.

Rush is not familiar with cruise industry standards for ice skating. But, RCC has internal standard-operating procedures and safety-quality-management procedures with which staff are expected to comply. These policies and procedures should be followed uniformly on all RCC ships. There is no reason one ship would allow backwards skating and another would prohibit it.

On March 9, 2018 there should have been one staff member at the equipment desk, one at the waiver desk and one on the microphone watching the ice. Also, the Ice Captain should be on call at all times or reachable by phone



in case of need. The staff member handing out the skates is close to the ice and is able to watch the ice all the time.

If there was not a staff member on the microphone watching the ice, that would be a violation of the policies and procedures of RCC.

### **I. Amanda Campos**

By agreement of the parties, the deposition of Rule 30(b)(6) corporate representative Campos taken on December 12, 2019 was used in lieu of live testimony.

Campos is an attorney and for the past three years has been the Director of Guest Claims and Litigation for RCC.

Based upon her review of documents, Campos initially testified in her deposition that RCC was aware of twenty-seven complaints of passengers being injured due to a crash, collision, near miss or due to someone skating backwards in the past three years in its entire fleet. Those documents establish prior incidents of all persons injured due to skating in the past three years. There is documentation of only one skater being injured due to his own backwards skating in the past three years. Later, it was determined that there were actually thirty-two incidents of persons injured while skating on an RCC ship in the past three years but only one involving backwards skating.

### **J. Dr. Jacob Landes**

Dr. Landes is a doctor of osteopathic medicine and an orthopedic surgeon in Broward County, Florida. He is well-qualified in education, training and experience to opine in the area of orthopedics.

Dr. Landes performed surgery on Lori on March 10, 2018. The emergency-room doctor and radiologist had determined that she had severely comminuted and angulated fractures of both the tibia and fibula. Ankle mortise was found to be intact. Several pieces of bone had broken off and the fracture fragments had moved away from the bone and each other. Anytime there is angulation, there is a stripping of, and significant injury to, the thin, cellular covering of the bone which allows blood flow to the bone and contain nerves of the area. Landes determined that surgery was necessary.

The location (just above the ankle) and type of injury are consistent with a fall involving someone wearing a tightly worn ice skate.

One of the goals of the surgery was to more properly align and lengthen the bones from the knee to the ankle but the biomechanics could not be put back into the original alignment or length. This slight mis-alignment puts more stress on one particular area of the lower leg and ankle.

Dr. Landes's surgery installed a nail and screws in and on the tibia bone and a metal plate and screws on the fibula. The nail is more like a rod and runs through the bone marrow of the tibia from below the knee to just above the ankle joint. The fact that the tibia fracture was present at the ankle joint increases the odds of developing arthritis in the joint. It is not possible to make the bones and joint perfect after surgery.

The surgery was performed on March 10, 2018 and she remained in the hospital for three days after the surgery. Landes was happy with the surgical results. This does not mean that when healed the leg will be the same as before. Even given the best healing and results, the scars are permanent, and the biomechanics of the leg will never be the same.

Landes recommended physical therapy for Lucas after she returned to Canada.

Landes saw Lucas for a follow-up evaluation on December 6, 2019. Lucas complained of incisional tenderness, knee pain with flexion, ankle pain, discomfort with shoe wear, dull and aching pain and sharper pain with weight-bearing activity. These are typical complaints one would expect to see following the injury and surgery.

Landes took X-rays of the leg, and it was completely healed at that time. Landes found that the hardware was not particularly bothersome to her except in typical ways such as tenderness in several areas.

Landes opines that he was able to have an almost perfect realignment of the biomechanics, but the fact that the injury is within the joint will affect the comfort of the joint. When a non-smooth surface interplays with a smooth surface over time there is a possibility of developing arthritis in the joint. Landes believes it is likely there will be a deterioration of the joint in this case. Based upon the preference of the patient, the hardware may need to be removed from the leg. The nail from the tibia would not be removed, but the screws in the tibia and the metal plate and screws in the fibula would be removed if there is too much pain and discomfort. The likelihood of Lucas needing an ankle fusion is difficult to ascertain. The need for a fusion is affected by many factors. It is more likely than not she will not need surgery, but it cannot be ruled out. Lucas will likely have pain and discomfort at least at this level or increasing slightly over the years. Her range of motion will have permanent limitations and likely will increase over time. Her strength and endurance in the leg will also be less than the other leg.

Lucas's complaints that she can no longer run or kick a soccer ball are consistent with her injury. Her complaints about knee pain when kneeling, dancing or other activities are also consistent with her injury. Impact-type activities are more affected by this type of injury.

**K. Lisa Fedick**

Fedick was called as an expert witness by Lori. Her primary job is as president and ice rink manager for Wonderland of Ice Management, Corp., one of the first successful public/private management ventures for a public ice rink. Her office is located in Bridgeport, Connecticut.

She also runs a rink in Norwich, Connecticut.

Fedick was asked to opine as to the operation of the RCC ice rinks as to its providing a reasonable standard of care and also about the training of the staff on the ships.

Fedick is a member of several national and regional professional associations relating to the ice sports industry.

The ISI Guide to Public Skating Management and Supervision provides guidelines for the safe use of ice rinks. They are not mandatory. During a skating session, the guide's suggested rules prohibit: skating in a manner that interferes with the safety of other skaters, roughness, excessive speeding and cutting through skaters, no organized games such as tag, no holding hands, no stopping or standing, no figure skating or backwards skating except in designated area, no eating or drinking.

Skating backwards does not give you a full field of vision, and it is more difficult to see if someone has fallen. Skating backwards is like driving a car in reverse without a backup camera or rearview mirror.

The guidelines also call for a rink guard to be near or on the ice with the other skaters to provide constant supervision and to make sure everyone is complying with the rules.

Fedick opines the rink guards should use a three strikes policy: first violation is a warning; second violation, the skater is given a time-out for a few minutes; third violation, they are removed from the ice for the remainder of the session.

The rink guards should be identifiable to the skaters by wearing a bright colored jacket or referee shirt and should have a whistle to get a skater's attention quickly. At times, loud music is played, and the whistle can be heard over the music.

A rink guard off the ice can also be effective if he has a microphone and whistle. The off-the-ice guard has a more panoramic view of the rink.

The rink guard should be properly trained to know the rules. The standard operating procedures ("SOP") of RCC do not contain any guest ice-skating rules. There is no listing of the do's and don'ts for the guest skaters. Since there were no rules of prohibited behavior in the SOP, it was up to each current staff member to train a new member which would lead to inconsistency in the rules.

The SOP of RCC sets a maximum number of skaters at fifty-five and requires a minimum of three staff members present during the skating session: one to deal with the waivers, one to hand out equipment, and one on the microphone watching the ice. That third staff member is the equivalent of a rink guard.

The SOP also requires more staff members if there are higher numbers of children, about fifteen, during a session.

Lori Lucas signed the waiver on March 5, 2018 but did not skate until March 9, 2018.

In the waiver signed by Lucas, she agreed to a number of rules: always keep moving, avoid other skaters, do not skate against traffic, persons ahead of you has the right of way, do not skate faster than conditions permit, no tricks, jumps, weaving or horseplay, and no carrying children or other items. The waiver also informed Lucas in capital letters that ice skating is a hazardous activity, with inherent dangers that no amount of care, caution, instruction or expertise can eliminate.

An Olympic rink is 200 feet long and 85 feet wide but the rink on the ship is 60 feet long and 40 feet wide so there are shorter straightaways and more turning. Thus, skating backwards on a smaller rink, particularly among inexperienced skaters, should not be allowed.

Fedick believes skating backwards could be considered a type of trick.

Fedick conducted an inspection of the rink on November 17, 2019. A safety video was shown with several rules, including “no backwards skating.”

Apparently, some of RCC’s other ships did not allow backwards skating prior to this incident since RCC received complaints from passengers who were not happy that they were not allowed to skate backwards. Other passengers complained that skaters were violating the rule against backwards skating, and nothing was done by the staff after it was brought to their attention. Other passengers complained that there were too many people allowed on the ice at the same time, especially with the inexperienced skaters. None of the passenger complaints were from the *Harmony of the Seas*.

Fedick also reviewed four other safety videos from RCC. In one video passengers are told “forward skating ONLY.” In another video they are told “no backwards skating.” In two other videos, there is no mention one way or the other about backwards skating.

In response to a request to produce the safety video in use at the time of the incident, RCC produced the video seen by Fedick during her inspection. But neither Lucas nor her husband testified that they were shown a safety video.

The CCTV video of the incident shows the man in the red shirt and blue helmet enter the ice two minutes and forty-seven seconds prior to the incident.

According to Fedick, he is skating faster than conditions permit and is weaving and traveling against traffic. At one point he skates backwards while holding two hands of another female skater. Two small children appear to be chasing him at one point. Fedick also pointed out a skater who appeared to be holding up a phone and taking a photo or video. There were also two other male skaters who were skating backwards.

Fedick observed Lucas skating on the video and she appeared to be a proficient skater who was obeying all the rules.

Fedick also inspected the ice skates that were handed out to skaters, and they were the standard rental skates one would find in any ice-skating rink.

Fedick did not see any signage posted at the rink during her inspection. Under industry standards and the American Society for the Testing of Materials, specific signage for proper conduct of skaters and spectators is required at ice rinks. The signs not only alert the passengers but also remind the staff of the rules they should be enforcing.

One industry standard sets a maximum of one skater per one-hundred square feet of ice if there are three doors to enter and exit the ice. RCC's rink only has one door. Based upon its size, no more than twenty-four skaters should be allowed on the RCC rink – if it had three exits. An Olympic skating rink safely holds 167 skaters.

On the *Harmony*, the table at which the staff member sits to hand out skates and equipment is perpendicular to the ice, so the staff member has to look to his or her left to see the rink, rather than looking straight ahead.

Fedick also reviewed Lucas's husband's GoPro video and observed several other violations by skaters.

Although Fedick was provided discovery materials concerning passengers who were injured or collided into during skating sessions on RCC ships, Fedick cannot say that any of the prior incidents involved backwards skating.

Fedick believes the training of the crew on *Harmony of the Seas* was insufficient. The only training they received was by shadowing the person who was working before they started. This led to inconsistency in rules and enforcement of the rules. The ice captain who was supervising the staff are professional figure skaters but had no experience or training in how to safely operate a public skating session.

Fedick also believes there was inadequate monitoring of the skating sessions.

Fedick believes that if there had been no backwards skating allowed and if a rink monitor had been assigned solely to watch the ice, the incident would not have occurred.

During the entire session, the music never stopped, meaning that no announcements were made with a microphone during the session.

Fedick reviewed depositions, videos, the amended complaint, and answers to request for admissions in forming her opinions.

Fedick believes RCC ignored its own safety standards as well as industry standards. There was no signage, no rink guards, no supervision.

Fedick was paid \$200 per hour and expended 54.5 hours before testifying. The Plaintiff's law firm has never retained Fedick in other cases.

Fedick agrees that no matter what precautions are taken, skaters are going to fall and collisions are going to occur. There are inherent dangers in ice skating. Fedick also agrees the RCC waiver form advises passengers of many prohibited activities.

Fedick agrees that at her Norwich Rose Garden ice rink, backwards skating is permitted. But, there are monitors, there are cones to section off an area of the rink, and there are fewer skaters that utilize that rink.

On page one of her report, Fedick wrote that her opinions are based on industry best practices which are considered to be the most efficient and desired methods to achieve safety goals. Her opinions in the report were not based upon industry standards which are a minimum standard accepted in the industry.

In her report, Fedick includes an example of how an on-the-ice monitor can observe and stop prohibited behavior. The monitor took 27 seconds to skate over and stop the prohibited activity.

Fedick agrees that in this incident, the time between the man in the red shirt turning to skate backwards until the fall was three seconds. Fedick opines that had the man in the red shirt been properly monitored earlier in the session, he might have been removed from the ice before the incident.

Fedick was shown clips from the CCTV video which show Christopher Lucas, the Plaintiff's husband, skating backwards several times. If there was no rule against backwards skating, then Christopher would not have been breaking a rule by skating backwards.

#### **L. Dave Wescott**

Wescott is managing partner of All Star Arenas in Tampa, Florida and he provides consulting to the ice rink industry. He previously held a position in an ice rink industry organization and was involved in putting together policies in risk management. Wescott worked on updating an ice-rink standard guide for the building and management of ice rinks. Prior to the Star organization, ISI was the only rink-industry trade show and the only guide in the industry. USA Hockey and US Figure Skating funded a start-up for helping companies operate ice rinks safely and profitably. Wescott was the assistant director for ice hockey



for the Olympics in Salt Lake City and has been involved in world championships. The ATSM and ISI standards are guidelines and are not mandatory.

There are approximately 2,000 ice rinks in the United States, and Wescott has been to over one third of the arenas. The industry recommends that ice rinks obtain waivers from skaters prior to skating sessions. Most of the rinks in the US require waivers but there is no requirement that a rink obtain a waiver.

Ice rinks typically do not show safety videos prior to the skating sessions.

The vast majority of ice rinks do not prohibit backwards skating. In addition to his personal knowledge from being present at numerous ice rinks, Wescott and another staff member searched the websites of approximately fifty ice rinks, and only one prohibited backwards skating.

Industry standards do not require a monitor to be on the ice at all times.

Wescott conducted a ship inspection of the ice rink on the *Harmony*. The rink is much smaller than a regulation rink. On a facility that small, it is acceptable to monitor the rink from off the ice.

Wescott reviewed RCC's written policies and procedures relating to ice skating and he believes the policies and procedures go beyond what is normally found in other policies and procedures. Many rinks have no written policies and procedures.

Wescott watched the CCTV video of the incident in this case. Prior to the incident occurring, he did not see any reckless skating or any activity that would have warranted intervention by the staff. The man who collided with the Plaintiff had only been skating backwards for one to two seconds prior to the incident. Even if a monitor had been on the ice, the incident could not have been prevented.

It is common in the industry for existing employees to train new employees.

Wescott believes that RCC's actions in this matter were reasonable relating to this incident.

## **2. Findings of Fact**

### **A. Liability**

Lucas, a Canadian citizen residing in Ontario, was a passenger aboard RCC's *Harmony of the Seas*, on March 9, 2018. She was on the week-long cruise, which began on March 3, with her husband, two children, and other extended family. The *Harmony* has an ice-skating rink, as do twelve other RCC ships, where professional ice-skating shows are performed and where passengers can also participate in recreational ice-skating sessions.

At the time of Lucas's fall, RCC did not prohibit backwards skating. RCC's policy of allowing backwards skating during recreational skating sessions meets industry standards. In fact, the majority of ice rinks permit backwards skating. Further, RCC's description of the risks of ice skating, provided in its waiver, which Lucas signed, exceeds the industry standard. The waiver warns, "[I]ce is very slippery and depending upon individual skill and experience level, ice skating may involve falls upon the ice, collisions with other skaters . . . and may be therefore considered a hazardous activity . . . ." The waiver also acknowledges that ice-skating participants "voluntarily participate with full knowledge, acceptance, and assumption of any and all risks of serious personal injury." Further, industry standards do not require showing a warning video before recreational skating sessions. Although RCC produced a safety video in response to a request for the video shown at the time of the incident, the greater weight of the evidence supports that the video was created after this incident and is either inadmissible as a subsequent remedial measure or as irrelevant. The Court finds that the relevant safety video which established the policy of RCC does not prohibit backwards skating.

The Court finds that both ice-rink experts who testified are legally qualified to render an opinion, but the Court finds the opinions of the defense expert, David Wescott, to be more persuasive.

Lucas had been on the ice for about ten minutes before being injured. Lucas's fall was caused when the left skate of an unidentified adult male skater, who was skating backwards, came in contact with Lucas's skate. Significantly to the Court, the male skater was traveling in the same direction as Lucas, and he was traveling slightly faster than Lucas. When Lucas turned right towards the boards of the rink, her skate extended out behind her and into the path of the male skater. Based upon Lucas's testimony, the Court finds that the skates made contact. But this slight touching was more from Lucas turning and extending her skate into the male skater's path than it was from the backwards skating of the male skater. The male skater was taking a path parallel to and safely wide of Lucas, and had he been skating forward at the time of her turning to the right, the result would have been the same. Video of the skate session, prior to Lucas's fall, shows the same male skater skating backwards skillfully and not recklessly, and at one point he was slowly skating backwards while holding both hands of another inexperienced skater, apparently guiding her. Lucas's husband was also skating backwards. Although the rink held a maximum of fifty-five skaters, there were only about twenty-five skaters on the rink at the time of the incident.

Lucas fell within two seconds of the male ice skater's turning around to skate backwards. Lucas's fall followed the male skater's turning to skate backwards so quickly that crewmembers would not have been able to stop him

in time no matter how many crewmembers had been monitoring the ice and even if a crewmember were on the ice at the time of the incident. Based on the evidence presented, the Court does not find that, had the backwards skater been previously admonished by RCC to not skate backwards, he would have then refrained, in any event, from continuing to do so.

The three crew members assigned to the skating rink were all in close proximity to the rink with a good view of the rink.

### **3. Conclusions of Law**

There is no doubt that Lori Lucas fell on the RCC ice rink and suffered very serious injuries. By all accounts, these injuries had a significant impact on her life for more than six months and will continue to have some negative impact on her in the future. She was truthful in her testimony and has worked very hard to rehabilitate herself and has not exaggerated the effects of her injuries. The Court has great empathy for her. But, the law does not make a ship responsible to every person who is injured while on board.

General maritime law applies to cases, such as this one, that allege torts committed aboard cruise ships sailing in navigable waters. *See Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1321 (11th Cir. 1989); *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625 (1959). Under general maritime law, a shipowner owes its passengers a duty of reasonable care under the circumstances. *Id.* It is well established that a cruise line is not liable to passengers as an insurer; there must be some failure to exercise due care before liability can be imposed. *Monteleone v. Bahama Cruise Line, Inc.*, 838 F.2d 63, 64 (2d Cir. 1988).

To establish negligence, a passenger must prove: (1) the defendant had a duty to protect the plaintiff from a particular injury; (2) the defendant breached that duty; (3) the breach actually and proximately caused the plaintiff's injury; and (4) the plaintiff suffered actual harm. *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012). To prove that the cruise line breached its duty of reasonable care, the plaintiff must show that: (1) a dangerous condition existed; and (2) that the Defendant had notice of the dangerous condition. *Whelan v. Royal Caribbean Cruises Ltd.*, 2013 WL 558970, \*4 (S.D. Fla. Aug. 14, 2013). A dangerous condition can arise when a risk is not readily apparent and obvious to a passenger. *Smolnikar v. Royal Caribbean Cruises, Ltd.*, 787 F. Supp. 2d 1308, 1315 (S.D. Fla. 2009) (Jordan, J.). Recent Eleventh Circuit precedent has made clear, however, that "even if the risk was open and obvious," a finding of negligence against a cruise line is not precluded. *Carroll v. Carnival Corp.*, 955 F.3d 1260, 1269 (11th Cir. 2020). Instead, a plaintiff's decision to proceed, despite the open and obvious danger, is considered in determining her

comparative negligence. *Id.* Regarding notice, such a finding “hinges on whether [the cruise line] knew or should have known of the dangerous condition.” *Id.* at 1264 (internal quotations and citations omitted).

The mere fact that an accident occurs does not give rise to a presumption that the setting of the accident constituted a dangerous condition or that there was notice of a risk-creating condition. *See Isbell v. Carnival Corp.*, 462 F. Supp. 2d 1232, 1237 (S.D. Fla. 2006) (Moreno, J.). Whether a danger is open and obvious is determined from an objective, rather than a subjective, point of view. *Salazar v. Norwegian Cruise Line Holdings, Ltd.*, 188 F. Supp. 3d 1312, 1316 (S.D. Fla. 2016) (Gayles, J.); *see also John Morrell & Co. v. Royal Caribbean Cruises, Ltd.*, 534 F. Supp. 2d 1345, 1351 (S.D. Fla. 2008) (Altonaga, J.) (“Individual subjective perceptions of the injured party are irrelevant in the determination of whether a duty to warn existed.”).

Backwards skating is not a prohibited activity within industry standards. RCC had no previous notice that would have required it to prohibit skating backwards. RCC’s policies and procedures and training were reasonable. Its policy of having three staff members monitoring the ice rink was reasonable, even considering the fact that those staff members also had to attend to other responsibilities. All three were in close proximity to the rink with a good view of the rink; and, there were two microphones available to enforce any rule violations. It appears that on the date of the incident the three staff members may not have been paying as close attention as they should have been; but, even had they been watching, they would not have had time to intervene to prevent this incident. Thus, if they failed to monitor the rink sufficiently, such failure was not a proximate cause of the accident. Further, no credible evidence was presented to show that, had RCC staff previously warned the backwards skater, he would not have resumed skating backwards, regardless, after being admonished not to.

RCC should have had a consistent policy regarding the rules of ice skating throughout all of its ships and among all its staff. And, each staff member should be aware of the rules and his or her responsibilities. But, these shortcomings were not a proximate cause of Lucas’s injuries.

The Court also finds that the fact that some RCC staff members on other ships, apparently on their own, decided to make safety videos in which they indicated that backwards skating was prohibited, does not impose a legal duty on RCC to show safety videos prior to all skating sessions. Nor does it establish that backwards skating was prohibited as a policy of RCC. For example, if lifeguards at four different hotels of a major hotel chain on their own decided to prohibit backwards swimming at those four hotels such action would not bind the entire hotel chain to a policy prohibiting backwards swimming. Nor would

the lifeguards' actions establish a legal duty to prohibit backwards swimming. Additionally, the Court does not find that those safety videos establish notice under the circumstances of this case.

#### **4. Conclusion**

Accordingly, the Court finds the greater weight of the evidence fails to support the Plaintiff's claims and, thus, finds in favor of the Defendant on counts one, two, and three of the amended complaint. The Clerk is directed to **close this case**.

**Done and ordered** at Miami, Florida on June 1, 2020.

A handwritten signature in blue ink, appearing to read 'R. N. Scola, Jr.', written over a horizontal line.

Robert N. Scola, Jr.  
United States District Judge