

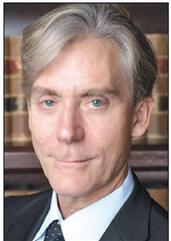
NORTH CAROLINA LAWYERS WEEKLY

SEPTEMBER 13, 1999 | NCLAWYERSWEEKLY.COM

Movie Mishap Spotlights New Charge On Premises Liability

A stagehand shocked by power lines over a Wilmington movie set has won a \$2.5 million negligence verdict against the studio that owned the property.

The plaintiff, a carpenter on the ill-fated motion picture *The Crow*, was badly burned and blinded in one eye after his aerial lift touched the electric wires. Actor Brandon Lee was killed in another mishap on the same picture.



Isaac Thorp

Even though the production company he worked for built the outdoor set, the plaintiff successfully argued that the studio should have relocated or de-energized the power lines over its back lot.

The award in *Martishius v. Carolco Studios Inc.* (New Hanover Superior Court; 94 CvS 997) is one of the first based on the new pattern jury instructions for premises liability cases (see sidebar, page 5).

The instructions were changed after the Supreme Court's landmark 1998 ruling in *Nelson v. Freeland*, 349 N.C. 615, 507 S.E.2d 882. The Freeland court eliminated the common-law distinction between invitees and licensees. Landowners must now use reasonable care to maintain their premises for the protection of all lawful visitors.

The new instructions helped the plaintiff's case, according to one of his attorneys, David Kirby of Raleigh. He handled the case with Isaac Thorp of Raleigh and Fred Anderson of Wilmington.

"The production company was allowed to use the studio's property pur-

suant to a license agreement," said Kirby. "Before *Nelson*, a landowner owed a lesser duty to licensees than to invitees. Because the *Nelson* decision eliminated the distinctions between invitees and licensees, the legal status of Mr. Martishius was not an issue."

Thorp agreed, saying the new rules streamlined the analysis.

"Under the old law, the duties to licensees were substantially the same as those to trespassers," said Thorp. "The landowner's duty was essentially not to willfully or wantonly injure a licensee. Passive negligence didn't count. A licensee would have a claim only if the landowner increased the hazard to the licensee while the licensee was actually on the property."

Facts

The plaintiff in *Martishius* touched the power lines while using an aerial lift with an extendable boom to move a door into place.

He suffered burns over 45 percent of his body and was blinded in one eye. He was left with a permanent disability of 40 percent in each arm, a 20 percent disability in one leg, and a 15 percent disability in the other leg. He also suffered a spinal cord injury that continues to affect his balance.

The case went to trial against the landowner, Carolco Studios in Wilmington.

According to the plaintiffs, the placement of the *Crow* set, which was approved by the studio, was within 10 feet of the power lines. That forced the production team's workers to use aerial lifts dangerously close to the lines.

To provide a safe place to work, the

power lines should have been buried, insulated or de-energized, according to the plaintiffs, or the set relocated. Carolco had previously taken similar steps to create safe clearances on other pictures, the plaintiffs argued.

Carolco contended that it had no duty under its license agreement to make any changes at its facilities. The reason: the danger of above-ground power lines was open and obvious, and the production company built the set.

The defendant also maintained that the plaintiff was contributorily negligent for touching the lines with the aerial lift.

Following a four-week trial, the jury awarded the plaintiff \$2.5 million. The defendant has already given notice of appeal.

While the distinction between invitees and licensees was eliminated in *Martishius*, another status distinction could play a role in the case on appeal — whether Carolco's agreement with the plaintiff's production company was a license or a lease.

"The defense argued that our client was essentially a tenant because the portion of the lot where the set was built had been leased to the production company and the studio had no control whatsoever," said Thorp. "The duties owed to a lawful visitor are different from those owed to a person who is on a portion of the property that has been leased and over which the owner has no control."

However, Judge W. Allen Cobb held the parties' agreement was in fact a license, paving the way for the new jury instructions under *Nelson*.

Premises Liability – Carpenter Touched Live Wires Over Movie Set – Negligence Alleged Sued Studio, Landowner – Lawful Visitor – New Pattern Instructions – \$2.5 Million Award

Brief Statement of Claim: This is a premises liability claim stemming from an electrocution at a movie studio back lot shooting *The Crow* in which a carpenter contacted power lines while operating an electric lift, severely burning him.

Principal Injuries (in order of severity): The plaintiff suffered burns over 45 percent of his body. He had a permanent disability of 40 percent in each arm, 20 percent in one leg and 15 percent in the other.

In addition, he suffered a spinal cord injury that affects his balance. He is also blind in one eye as a result of the electric shock injury.

The plaintiff was out of work for more than four years, but had returned to work and was earning more after the injury than before.

Special Damages: n/a

Tried or settled: Tried

County where tried or settled: New Hanover

Case Name and number: James L. Martishius and Cindy K. Martishius v. Carolco Studios, Inc. (New Hanover Superior Court; 94 CvS 997)

Date Concluded: July 16, 1999

Name of Judge: W. Allen Cobb Jr.

Amount: \$2.5 million

Insurance Carrier: n/a

Expert Witnesses and areas of expertise: n/a

Attorneys for plaintiffs: Isaac L. Thorp and David F. Kirby, Raleigh; and Frederick D. Anderson of Goldberg & Anderson, Wilmington

Other Useful Info: The plaintiff was a carpenter on the set of the ill-fated movie *The Crow* in which actor Brandon Lee was killed. The plaintiff was using an aerial lift, with an extendable boom which he operated from an aerial bucket to move a door into place on a set when he contacted power lines, severely burning him.

The case went to trial against the landowner, Carolco Studios in Wilmington. The plaintiffs alleged that the back lot of the studio had overhead uninsulated electric wires that were located too near the location where outdoor sets were constructed.

The plaintiffs maintained that placement of the set, which was approved by the studio, was within 10 feet of the power lines, forcing workers to use aerial lifts dangerously close to the lines.

The plaintiffs contended the lines should have been buried, insulated or de-energized, or that the sets or lines should have been relocated to provide a safe premises for construction of movie sets and movie production. Defendants Carolco had previously relocated lines, de-energized lines and buried lines on its back lot for film production and set construction to create a safe clearance, the plaintiffs argued.

The defendant contended that it had no duty under its license agreement with the production company, Crowvision, to make any changes at its facilities because the danger of above-ground power lines was open and obvious, and because Crowvision built the set. The defendant also maintained that plaintiff was negligent for touching the lines with the aerial lift.

Following a four-week trial in Wilmington, the jury found for the plaintiff. During the jury charge, the trial judge used the new charge based on the Supreme Court's recent decision in *Nelson v. Freeland*, which abolished the distinctions between invitees and licensees.

Under the new law, the plaintiff had the status of a lawful visitor and defendant was found to owe a duty of reasonable care.