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STATE OF MAINE  
ANDROSCOGGIN, SS.

ANDROSCOGGIN  
SUPERIOR COURT

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-02-33  
*TED-AND-2/28/2003*

CLAIRE THOMAS et al,

Plaintiffs

v.

**DECISION AND ORDER  
ON DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

MAINE BONDING &  
CASUALTY COMPANY et al.,

**DONALD L. GARBRECHT  
LAW LIBRARY**

Defendants

**MAR 27 2005**

The plaintiffs have brought this action as a "reach and apply" seeking to recover damages from a separate action in which the plaintiffs recovered a substantial judgment against Martin S. Finley, Jr. and others, including his business interest (Chalet Motel, Inc.). Finley had lured the young plaintiffs to the motel and other places where he furnished them with alcohol and enticed them to pose nude while he photographed them. Some of the activity occurred at the Chalet Motel.

As a result of his activity, Martin Finley was indicted for one count of gross sexual assault and four counts of sexual exploitation of a minor. He was subsequently convicted on all four counts of sexual exploitation of a minor and was sentenced to a term of 8 years in prison, with 5 years suspended, to be followed by 4 years of probation.

The defendants have moved for summary judgment on grounds that an endorsement attached to the policies excludes coverage for acts of sexual abuse or molestation:

This insurance does not apply to "bodily injury", "property damage", "advertising injury" or "personal injury" arising out of:

1. The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any injured[.]

Clearly, this exclusion would prevent recovery for conduct that would constitute a sexual assault as originally charged in the indictment for gross sexual assault. The defendants further maintain that even if Finley's conduct did not involve an actual sexual act or physical activity, that the "exploitation" falls within the scope of the abuse or molestation exclusion.

Finley is not alleged to have physically assaulted the girls. The plaintiffs say that his actions, even though they are of a sexual nature and reprehensible and resulted in criminal convictions, his conduct did not constitute "molestation."

To the extent that the terms of the policy create any ambiguity it shall be construed against the defendant who drafted and selected the language of the policy. See *Cambridge Mut. Fire Ins. Co. v. Vallee*, 687 A.2d 956 (Me. 1996) and *Baybutt Constr. Corp. v. Commercial Union Ins. Co.*, 455 A.2d 914 (Me. 1983).

In addition to the cases and statutes cited and relied upon by plaintiffs, the court looks at common definitions for molestation and exploitation:

**exploitation:** Taking unjust advantage of another for one's own advantage or benefit.

BLACK'S LAW DICTIONARY (5<sup>th</sup> ed. 1979).

**molest:** To disturb, interfere with or annoy. To subject to unwarranted or improper sexual activity.

AMERICAN HERITAGE DICTIONARY OF THE AMERICAN LANGUAGE (2<sup>nd</sup> ed. 1992).

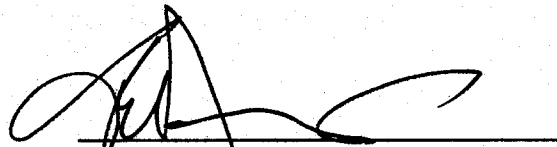
Finley's conduct with the girls was for his own advantage or benefit. That conduct, as salacious as it is, did not amount to a sexual act or sexual contact that would warrant exclusion under the provision provided in defendants' policies.<sup>1</sup>

The entry will be:

Defendants' Motion for Summary Judgment is denied.

So Ordered.

DATED: 02/28/03



Thomas E. Delahanty II  
Justice, Superior Court

*Plaintiffs*  
*Timothy Bryant*  
*Roy Poirie*

*Defendants*  
*Martica Daugla*

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<sup>1</sup> The Maine Criminal Code requires an actual touching to constitute a sexual act or sexual contact. 17-A M.R.S.A. § 251(1)(C) and (1)(D).