

## [The First Circuit Finds No Indemnification Based on the Plain Language of a Contract](#)

### ***Insurance Law Update***

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*U.S. Court of Appeals for the First Circuit*

In *Farmers Ins. Exchange v. RNK, Inc.*, \_\_\_ F.3d \_\_\_, 2011 WL 183969 (1st Cir. (Mass.) January 21, 2011), the First Circuit Court of Appeals held that a telephone equipment provider is not required to indemnify a phone company for damages arising from the phone company's failure to adequately block minors from chat lines.

Farmers Insurance Exchange sought a declaratory judgment against its insured, Ripple Communications, Inc. and RNK, Inc. d/b/a RNK Telecom, that Farmers had no duty to indemnify RNK for damages in an underlying action. Ripple, a provider of conferencing lines, and RNK, a telephone company, had entered into a contract calling for Ripple to install certain electronic equipment at RNK's premises to provide conferencing services, including chat lines, to RNK's customers. For Ripple's chat lines to function, a call traveled over RNK's network and through Ripple's proprietary hardware and software. The contract required Ripple to indemnify and hold RNK harmless from and against all damage claims "associated with any equipment" of Ripple.

In the underlying action, Jane Doe, a minor acting through her adoptive father, John Doe, sued RNK alleging that it violated New York law by not assigning blockable telephone numbers to chat lines and that, as a result, Jane Doe was improperly able to gain access to a chat line through which she met several individuals whom ultimately sexually assaulted her (the Doe litigation). Jane Doe alleged that RNK's violation of certain regulations was the proximate cause of the injuries she sustained. RNK admitted that it failed to comply with the law and RNK's insurer settled the Doe litigation. The insurer then sought indemnity from Ripple and Farmers for the cost of defense and settlement of the Doe litigation.

In Farmers’ declaratory relief action, Farmers and Ripple jointly moved for summary judgment on the issue of whether Ripple, under its contract with RNK, had a duty to indemnify RNK against claims asserted in the Doe litigation. The district court held that Ripple had no such duty and granted the joint motion for summary judgment. The First Circuit affirmed, holding that the plain language of the contract between RNK and Ripple did not require Ripple to indemnify RNK. The court interpreted the word “equipment” in the contract’s indemnity clause to mean only Ripple’s tangible equipment located in RNK’s premises. The court also found that, in light of the purpose of the contract and in reading the agreement as a whole, “the aim of [the indemnity language] was to protect RNK in case Ripple’s tangible equipment located at RNK’s facilities caused damage to adjacent property in RNK’s facilities or bodily injury to persons in the vicinity.” The court concluded that the fact that a claim like the Does litigation could be traced back to the existence of Ripple’s chat line was insufficient to trigger the indemnity obligation in the contract.

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