

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

DANIEL BENNETT

NO. 2023 CW 0581

VERSUS

DEMCO ENERGY SERVICES, LLC,
FEDERATED RURAL ELECTRIC
INSURANCE EXCHANGE, COX
COMMUNICATIONS, INC., COX
COMMUNICATIONS LOUISIANA,
LLC, AND CABLE MAN, INC.

SEPTEMBER 11, 2023

In Re: Cable Man, Inc., applying for supervisory writs, 19th
Judicial District Court, Parish of East Baton Rouge,
No. 724647.

BEFORE: THERIOT, PENZATO, AND GREENE, JJ.

WRIT GRANTED. The trial court's June 12, 2023 judgment, which denied the Exception of Prematurity, which was by cross claim defendant, Cable Man, Inc., is reversed. Cross claim plaintiff, Cox Communications Louisiana, LLC ("Cox"), filed a Cross Claim against Cable Man, asserting it owed indemnity and a defense to Cox pursuant to the terms of a Master Construction Agreement. However, it is well-established that claims for indemnity, as well as claims for defense arising under an indemnity agreement, are premature prior to a determination that damages are actually owed and the indemnitee sustains a loss. See **Willis v. Frozen Water, Inc.**, 2015-0900 (La. App. 1st Cir. 12/23/15), 2015 WL 9466625, *3-4 (unpublished), writ denied, 2016-0146 (La. 3/14/16), 189 So.3d 1069 (citing **Suire v. Lafayette City-Parish Consolidated Government**, 2004-1459 (La. 4/12/05), 907 So.2d 37, 51). At this time, the lawsuit is still pending against both Cox and Cable Man, and no determination of liability had been made; thus, there is no obligation for indemnity and defense costs. See **Willis**, 2015 WL 9466625 at *4. Stated differently, indemnity (or reimbursement) is not available at this time because Cox has not discharged a liability which Cable Man should have assumed or otherwise suffered any loss or damages. See **Id.** Accordingly, Cox's cause of action for indemnity and defense is not ripe for adjudication. See **Id.** Therefore, the Exception of Prematurity filed by Cable Man Inc. is granted, dismissing the Cross Claim of Cox Communications Louisiana, LLC against Cable Man, Inc. for defense and indemnity, without prejudice.

MRT
AHP
HG

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DEPUTY CLERK OF COURT
FOR THE COURT