

## Colorado District Court Rules That Failed Software Installation Is Not Property Damage

03.29.18



(Article from *Insurance Law Alert*, March 2018)

For more information, please visit the [Insurance Law Alert Resource Center](#).

A Colorado federal district court ruled that liability insurers had no duty to defend or indemnify claims arising out of the botched installation of a software system, finding no physical injury to or loss of use of tangible property. *Ciber, Inc. v. Federal Ins. Co.*, 2018 WL 1203157 (D. Colo. Mar. 5, 2018).

The Hawaii Department of Transportation (“HDOT”) hired Ciber to install a new financial management system on its computers. The contract was terminated when Ciber failed to complete the project successfully. In ensuing litigation, HDOT asserted breach of contract and fraud claims against Ciber. Ciber’s primary and umbrella insurers refused to defend on several bases, including the lack of property damage. The court agreed and granted the insurers’ summary judgment motion.

The court held that allegations relating to the failed software system did not allege a loss of use of tangible property. The court reasoned that the claims were based on the software’s inadequacies, not the loss of use of HDOT’s computer system. The court distinguished *Eyeblaster, Inc. v. Federal Ins. Co.*, 613 F.3d 797 (8th Cir. 2010), in which the court concluded that software failure claims alleged covered property damage. Unlike the present case, the allegations in *Eyeblaster* included claims relating to the loss of use of the entire computer system as a result of failed software.

In addition, the court held that the underlying claims did not allege physical injury to the computer system. The court reasoned that the loss of “programming and custom configurations” does not constitute physical injury. Likewise, although the HDOT claimed damages for “infrastructure costs,” the court held that “there is no indication that [infrastructure] refers to anything other than software.”

### Authors and Contacts

**Bryce Friedman**  
Partner

[bfriedman@stblaw.com](mailto:bfriedman@stblaw.com)

+1-212-455-2235

