

## Loss Of Use Of Computer Servers Is Not Direct Physical Loss, Says Ohio District Court (Insurance Law Alert)

11.30.22



(Article from *Insurance Law Alert*, November 2022)

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

An Ohio district court ruled that an insured's loss of use of computer servers from a third-party vendor did not give rise to coverage under a property policy. *Computer Programming Unlimited, Inc. v. Hartford Cas. Ins. Co.*, No. 3:21-CV-2350 (N.D. Ohio Oct. 26, 2022).

Computer Programming Unlimited ("CPU"), an information technology service provider, secured server space from Nuvolat Cloud. When Nuvolat notified CPU that it was filing for bankruptcy and unable to continue providing cloud services, CPU retained a replacement vendor and was able to transfer its client data without any interruption in service. Thereafter, CPU sought coverage from Hartford for losses allegedly incurred in connection with Nuvolat's default in services. Hartford denied coverage based on the absence of direct physical loss or damage, as required by the policy. CPU filed suit and Hartford moved for summary judgment.

The court ruled in Hartford's favor, holding that Nuvolat's inability to continue providing servers did not constitute physical loss or damage. The court explained that "loss of use, functionality, and reliability" is insufficient to establish direct physical loss or damage, and in any event, is explicitly excluded from coverage under the policy. The court distinguished cases in which a loss of use resulted from a physical alteration to covered property and was therefore deemed to be within the scope of coverage.

### Authors and Contacts

**Bryce Friedman**

Partner

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

+1-212-455-2235

**Chet Kronenberg**

Partner

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

+1-310-407-7557

