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FINANCIAL ISSUE ERASES CONVICTION UNDER COMPUTER-HACKING LAW

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One of the first convictions obtained under a federal law intended to crack down on computer hacking has been erased by a federal judge based on a financial assessment of the damage.

Computer technician Herbert Pierre-Louis was convicted of knowingly transmitting a computer virus to his employer. But his jury decided the loss, not including lost profits, was less than \$5,000, the minimum required for a conviction.

"The law is the law, and the government didn't have sufficient evidence to meet all the elements of the crime," defense attorney Manuel **Casabielle** said Tuesday. "As a matter of law, the evidence is insufficient to convict him."

Prosecutors did not immediately return a call for comment but have told **Casabielle** they intend to appeal.

Federal prosecutors wanted U.S. District Judge Alan Gold to factor in lost profits caused by a two-day shutdown when the virus infected computers at Purity Wholesale Grocers work sites in Buffalo, N.Y., and Hopkins, Minn., in June 1998.

But the defense argued that the only loss allowed under the law was repair costs, which failed to meet the \$5,000 threshold.

Calls to the Boca Raton-based company for comment were not immediately returned. Purity has \$1.5 billion in annual sales through 12 affiliated companies.

Congress amended the Computer Fraud and Abuse Act last year to expand the concept of loss to cover lost revenue, repair costs and related damage from interrupted service.

In examining the old and new laws, Gold said the latest version is more than a simple clarification or technical change.

"It unequivocally broadened the statute's coverage," he wrote in a 15-page order last month.

With the amendment, Pierre-Louis may be the only defendant who can take advantage of the narrower definition of the cost of hacking.

If an appeals court sides with prosecutors and allows lost profits to be considered, Gold said Pierre-Louis would still be acquitted because prosecutors didn't work hard enough to prove the \$5,000 loss.