

Judge drops conviction in computer virus case

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Associated Press

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 of Pembroke Pines was convicted of knowingly transmitting a computer

virus to his employer, Purity Wholesale Grocers.

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.

Prosecutors did not 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.

The defense argued that the only loss allowed under the law was repair costs, which didn't meet the \$5,000 threshold.

Calls to Boca Raton-based Purity Wholesale were not 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.

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.

The conviction was greeted in the computer industry as a sign of things to come for hackers.

Pierre-Louis' trial was only the second nationally under the anti-hacking law. The other case ended in the conviction of a California dot-com systems administrator who infected his old company's computers after quitting.