

Corporate & Financial Weekly Digest

September 9, 2011 by [Steven Shiffman](#)

Seventh Circuit Cuts Damages Award Due to Lack of Evidence of Lost Profits

Co-authored by [Jason Clouser](#)

The U.S. Court of Appeals for the Seventh Circuit dramatically reduced damages awarded to a defunct internet marketing company, finding that the company squandered its opportunity to provide a reasonable estimate of the harm it suffered as a result of the defendant's conduct.

e360 Insight, Inc. (e360) sued the Spamhaus Project, a British nonprofit, in 2006. e360 accused Spamhaus of tortious interference and defamation arising out of Spamhaus' addition of e360 to its list of known spammers. e360 initially obtained a default judgment against Spamhaus in a district court in Illinois. The District Court also awarded e360 damages of \$11,715,000 based on an affidavit from e360's founder. The Seventh Circuit vacated the damages award and remanded the matter for further inquiry as to the extent of damages suffered by e360. After a bench trial on the damages issue, the District Court lowered e360's damages to \$27,002: \$27,000 for its tortious interference with contractual relations claim and nominal damages of \$1 each on its tortious interference with prospective economic advantage and defamation claims. Both parties appealed, with Spamhaus arguing that the damages award was too high, and e360 arguing that it was too low.

The Seventh Circuit sided with Spamhaus, and vacated the \$27,000 award on the tortious interference claim, ruling that the District Court erred by basing the award on lost revenues instead of lost profit. At trial, after the imposition of numerous discovery sanctions, e360 merely offered evidence of the revenues it purportedly lost. e360 presented no evidence of the costs it would incur in order to collect those revenues, making it impossible to determine e360's lost profits. The Seventh Circuit held that the failure to provide evidence of these costs "doom[s] the damage award" and vacated it, holding that e360 was only entitled to nominal damages of \$1 on each of its three claims.

e360 Insight, Inc., et al. v. The Spamhaus Project, Nos. 10-3538 & 10-3539 (7th Cir. Sept. 2, 2011).