

3 of 4 Peregrine defendants face retrial

by Bruce V. Bigelow

SAN DIEGO - Prosecutors said Monday they will proceed with a retrial of three of the four defendants from the first Peregrine Systems financial fraud trial, which ended in a mistrial after jurors deadlocked in favor of acquittal.

U.S. District Court Judge Thomas J. Whelan set Jan. 8 as a tentative date for the retrial of Gary L. Lenz, Peregrine's former chief operating officer; Patrick Towle, the former accounting manager; and Daniel F. Stulac, the former Arthur Andersen partner who headed the company's team of outside auditors.

The judge dismissed Joseph G. Reichner, Peregrine's former vice president for alliances, after prosecutors moved to drop charges against him.

Eugene Iredale, Reichner's defense lawyer, argued throughout the 13-week trial that Reichner was deceived by Peregrine's inner circle of conspirators during the year he worked at the San Diego software company.

Peregrine fired Reichner in January 2002, a few weeks after he had clashed with a top sales executive over a host of issues, including the way the company was booking its software sales revenue.

The first criminal trial in the corporate accounting scandal ended July 27 when Whelan declared a mistrial after the jury said it could not reach a verdict after 11 days of deliberations. The votes for acquittal ranged from 7-5 to 9-3.

In an unusual show of support, three of the jurors who had voted steadfastly for acquittal attended yesterday's hearing. Jurors Ray Peich, Thea Kaplan and Tina Coons hugged Lenz, Towle and their families after the hearing.

"I really didn't think the government did their job of proving their case," Peich said afterward. "I think it's a mistake to go forward with the retrial."

More than 1,300 documents and exhibits were entered into evidence in the case.

The three jurors said much of the prosecution's case depended on e-mails that were often inconclusive. In

many instances, the defendants had received copies of e-mails transmitted to other Peregrine executives.

"How do you hold a man accountable for an e-mail that he received?" Peich asked.

Defense lawyer Michael Attanasio, who represents Stulac, said he had never seen jurors return to show their support for defendants in a criminal case.

"We are somewhat amazed that we're here under these circumstances after the jury deadlocked in favor of acquittal for all defendants," Attanasio said.

With Reichner's dismissal from the case, criminal charges have been filed against 17 people since Peregrine collapsed in 2002. Eleven have pleaded guilty, and several testified against defendants in the case.

Assistant U.S. Attorney Eric Beste told the judge that the government intends to retry Lenz, Towle and Stulac jointly with two others who have been indicted in the case: former senior vice president Richard T. Nelson, who also served as Peregrine's general counsel; and Jeremy R. Crook, a sales executive who headed the company's operations in Europe, the Middle East and Africa.

Another defendant, former general counsel Eric P. Deller, was charged May 1 - four weeks after the first criminal trial began. He pleaded not guilty, and his trial is not expected to start for some time.

Citing the cost and time involved, Beste said, "In order to avoid having two substantial trials, it seems to me this court should have one substantial trial."

Attanasio and other defense lawyers argued for a speedy retrial and indicated they would oppose the government's move to consolidate the cases.

Before its collapse, Peregrine ranked among San Diego's most prominent technology companies, with a five-building headquarters in Carmel Valley and more than 3,500 employees worldwide. The government estimates that investors lost billions of dollars after the value of Peregrine shares plummeted.

The company later said it had overstated its revenue by \$509 million and understated its losses by \$2.6 billion over a 33-month period that began in April 1999.

