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Agreement reported in Peregrine fraud case

Consultant is accused in sales falsification

By Bruce V. Bigelow

UNION-TRIBUNE STAFF WRITER

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A Colorado business consultant who allegedly helped falsify software sales for San Diego's Peregrine Systems has reached a tentative agreement with prosecutors to settle his criminal case, his lawyer said yesterday.

Michael D. Whitt had faced securities fraud and conspiracy charges that were filed in the wake of a corporate accounting scandal at Peregrine. The software developer once ranked among San Diego's biggest technology companies.

"We have not actually finalized a settlement in the case yet," said Mark F. Adams, the San Diego lawyer representing Whitt in the case. But Adams said he has reached an agreement "in principle" with federal prosecutors.

Details remain to be resolved in both the criminal case and a related civil lawsuit filed against Whitt by the Securities and Exchange Commission. Adams said he hopes to have those details resolved by the end of the summer.

Assistant U.S. Attorney Eric J. Beste confirmed the government had reached an agreement with Whitt, but he declined to specify whether Whitt had agreed to plead guilty or if Whitt would cooperate with prosecutors in the case.

It has been four years since the first faint cracks appeared in Peregrine Systems' financial statements.

A full-fledged crisis engulfed Peregrine shortly after the company acknowledged accounting irregularities in May 2002. Less than six months later, the company filed for bankruptcy

reorganization and was the subject of intertwining federal investigations.

Shareholders lost an estimated \$4 billion in the company's collapse, according to government estimates.

The heart of the fraud, prosecutors allege, was an elaborate con to make Peregrine's financial results appear more dazzling than they really were. During a 33-month period that began in April 1999, Peregrine overstated its revenue by \$509 million and understated its losses by \$2.6 billion.

A sweeping indictment was filed in January 2005, although it will be another year before the criminal trial begins.

In a hearing last week, U.S. District Judge Thomas J. Whelan scheduled the securities fraud and conspiracy trial to begin April 3, 2007.

Yet the combined effects of pressure and time have nevertheless taken a toll.

Whitt is the seventh person to reach a plea agreement in the criminal case – which amounts to almost half the people who have been charged in the case. Those who have pleaded guilty are:

Matthew C. Gless, the company's former chief financial officer and a Peregrine board member.

Steven S. Spitzer, the former vice president in charge of Peregrine's indirect sales partnerships.

Larry Alan Rodda, a former KPMG consultant. Like Whitt, Rodda was a software reseller who prosecutors said helped falsify sales documents for the company.

Peter J. O'Brien, a former Peregrine sales employee.

John Burnham Benjamin, a former Peregrine treasurer.

Ilse Cappel, a former accounting manager.

Eight others, including Stephen P. Gardner, Peregrine's former chief executive, still face criminal charges in the case.

A ninth person named in last year's indictment, Jeremy Reeve Crook, is a British citizen who has been contesting prosecutors' efforts to extradite him to the United States.

In the four-hour hearing last week, Whelan also denied a variety of defense motions that asked

him to dismiss various counts.

Hewlett-Packard acquired Peregrine Systems in December in a \$425 million deal. The company is now part of the HP Software Global Business Unit, and its business software products are sold under the HP OpenView brand.

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