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Question of Partial Verdict Raised by Dewey Judge

Christine Simmons, New York Law Journal

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After a silent day of jury deliberations in the criminal case against three Dewey & LeBoeuf executives, Acting Supreme Court [Justice Robert Stolz](#) told the attorneys in the case that he was considering asking jurors if they had reached a partial verdict.

The purpose of the question would be to see where jurors are in the deliberation process, including whether they had reached a decision as to any of the three defendants on any count.

Ex-chairman Steven Davis and former executive director Stephen DiCarmine are charged with 49 criminal counts, while former chief financial officer Joel Sanders is charged with 53 counts. Prosecutors claim the three defendants oversaw a scheme to artificially inflate the firm's net income through a series of accounting adjustments.

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Stolz gave a draft of his proposed jury question to defense attorneys and prosecutors, telling them he was soliciting their opinion and to think about "whether this is something that could advance the case."

The judge said he would discuss the issue with them on Friday morning.

Stolz, after noting that jurors have been "extraordinarily quiet" Thursday, said it would be unfortunate if they were under the impression that a verdict had to be an "all or nothing" event.

A partial verdict occurred in May in the jury trial of former Goldman Sachs programmer Sergey Aleynikov, who was accused of stealing secret trading code. The jury was deadlocked on one count, but convicted him on another and acquitted him on a third. Ultimately, the judge overturned the conviction.

Stolz's proposed inquiry came on the 11th day of deliberations. Though the jurors were quiet Thursday, on prior days they have sent a series of notes asking for binders full of email and financial records. They also asked the judge to define their role as jurors and appeared at one point to be struggling with the deliberation process.

In a sign that deliberations may not end soon, one juror asked on Thursday to take off Oct. 15 and

16.

The jurors sent only one note on Thursday. They wanted to see three emails, including an email about a partner and one about a "lockbox" that the firm had used to collect client payments.

The length of deliberations and the juror notes have raised questions from court watchers about whether the nearly four-month trial would result in a mistrial, but defense attorneys not involved in the case said long deliberations for a litigation this large and complex are not unusual.

"If it appears to the judge that the jury is still working and still deliberating, [the judge] will let them go as long as necessary," said Michael Bachner, a former Manhattan prosecutor who runs a white-collar defense boutique. "Given the amount of time, effort, and expense that went into not only prosecuting this case but defending it, a judge will not declare a mistrial unless he believes there is absolutely no alternative."

If a jury hasn't reached a verdict and sends notes declaring that it is deadlocked, the judge can read a so-called "Allen" charge instruction, derived from an 1896 U.S. Supreme Court case, that is basically a push from the judge to reach a verdict, said Vinoo Varghese, who leads a criminal defense firm in New York.

"Some defense lawyers believe that a mistrial is good because you live to fight another day, but the question then becomes, does the client have the stomach for that. This isn't a simple issue for a defense lawyer," Varghese said.

The jury will resume deliberations on Friday.

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