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**TRADING TECHNOLOGIES**  
VS  
**PRE-DELIBERATION INSTRUCTIONS** eSPEED, INC, et al  
JUDGE MORAN

**FILED**

OCT 10 2007

Judge James B. Moran  
United States District Court

## **2 Pre-Deliberation Instructions**

### **2.1 General Instructions**

#### **2.1.1 Introduction**

Ladies and gentlemen of the jury, you have heard the evidence and arguments in this case and the time has come for you to weigh the evidence, deliberate and reach a verdict. Now it is time for me to instruct you about the law that you must follow in deciding this case. I will start by explaining your duties and the general rules that apply in every civil case. Then I will explain some rules that you must use in evaluating particular testimony and evidence. I will explain the positions of the parties and the law you will apply in this case. And last, I will explain the rules that you must follow during your deliberations in the jury room, and the possible verdicts that you may return. Please listen very carefully to everything I say.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. You should not be concerned with the wisdom of any rule that I state. Regardless of any opinion that you may have as to what the law may be – or ought to be – it would violate your sworn duty to base a verdict upon any view of the law other than that which I give you.

#### **2.1.2 Role of the Jury**

As the members of the jury, you are the sole and exclusive judges of the facts. You pass upon the evidence. You determine the credibility of the witnesses. You resolve any conflicts in the testimony. You draw whatever reasonable inferences you decide to draw from the facts as you have determined them, and you determine the weight of the evidence.

In deciding the facts of this case you must not be swayed by bias or prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the Court, and reach a just verdict regardless of the consequences.

This case shall be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to a fair trial at your hands, and a corporation is entitled to the same fair trial as an individual. The law respects all persons equally, and all persons including corporations stand equal before the law and are to be dealt with as equals in a court of justice.

In determining the facts, you must consider only the evidence I have admitted in the case. Any evidence to which I sustained an objection or that I ordered stricken must be disregarded.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice.

In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

The evidence from which you are to decide the facts consists of:

1. the sworn testimony of witnesses, on both direct and cross-examination;
2. the exhibits that have been received into evidence, and
3. any facts to which TT and eSpeed have agreed or stipulated; and
4. any facts that I have judicially noticed.

While you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the testimony and evidence in the case.

In determining any fact in issue you may consider the testimony of all witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

Any notes that you may have taken during this trial are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

Anything you may have seen or heard when the Court was not in session is not evidence. You are to decide the case solely on the evidence at trial. In considering the evidence in this case, you are not required to set aside your own observation and experience in the affairs of life. You have a right to consider all the evidence in the light of your own observation and experience in the affairs of life.

**2.1.3 Juror Oath**

In determining the facts, you are reminded that you took an oath to render judgment impartially and fairly, without prejudice or sympathy, solely upon the evidence in the case and the applicable law. I know that you will do this and reach a just and true verdict.

#### **2.1.4 Jury to Disregard Court's View**

I have expressed no opinion as to which witnesses are, or are not, worthy of belief, what facts are, or are not, established, or what inferences, if any, should be drawn from the evidence. If anything I have said or done has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it. In making your determination of the facts in this case, your judgment must be applied only to that which is properly in evidence.

From time to time I have had to rule on the admissibility of evidence, although I have tried to do so, when possible, out of your hearing. You must have no concern with the reasons for any of my rulings on the evidence, and you are not to draw any inferences from them, although you must abide by my decisions on what evidence you can and cannot consider. Whether offered evidence is admissible is purely a question of law for me to decide. Of course, you will dismiss from your mind completely any evidence which has been ruled out of the case by the court.

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