SEC v Staffeo 10 C 6266

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

Jury Instructions Given

FILED

JAN 24 2014

Judge Thomas M. Durkin
United States District Court

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

During the trial, certain testimony was presented to you by video. You should give this testimony the same consideration you would give it had the witnesses appeared and testified here in court.

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or struck any testimony from the record, such testimony is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

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

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this "inference." A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

You may have heard the phrases "direct evidence" and "circumstantial evidence."

Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, "I was outside a minute ago and I saw it raining." Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;

- the witness's memory;

- any interest, bias, or prejudice the witness may have;

- the witness's intelligence;

- the manner of the witness while testifying;

- the witness's age;

- and the reasonableness of the witness's testimony in light of all the evidence in the case.

You heard evidence that the Defendants initially invoked their Fifth Amendment privilege against self-incrimination and refused to testify during the SEC's investigation. You also heard evidence that Defendants later waived their Fifth Amendment privilege and provided full sworn testimony in this case.

The Fifth Amendment to the U.S. Constitution grants every person a privilege against self-incrimination, that is, the privilege to remain silent if he or she has a reasonable cause to apprehend danger from a direct answer to a specific question.

However, because this is a civil case, in evaluating all of the evidence you may draw an adverse inference from the fact that the Defendants invoked their Fifth Amendment privilege and refused to testify during the SEC's investigation. By adverse inference, I mean you may infer that had Defendants testified during the SEC's investigation, their testimony would have been unfavorable to the Defendants. However, in deciding whether to draw an adverse inference, you may consider that the Defendants later waived their privilege and provided full sworn testimony in this case.

You may consider statements given by a witness under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

In considering a prior inconsistent statement or conduct, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

Certain charts, graphs, timelines and PowerPoint slides have been shown to you. Those visual aids are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.

You must give separate consideration to each claim and each party in this case.

Although there are four defendants, it does not follow that if one is liable, any of the others is also liable.

When I say a particular party must prove something by "a preponderance of the evidence," or when I use the expression "if you find," or "if you decide," this is what I mean:

When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

The SEC claims that each Defendant violated Section 10(b) of the Securities and Exchange Act of 1934, and Rule 10b-5 thereunder, in that they used material nonpublic information, in breach of a fiduciary duty and acting with knowledge or reckless disregard, in order to make secret profits by purchasing the stock and stock options of Florida East Coast Industries, Inc. ("Trading").

The SEC also claims that each Defendant violated Section 10(b) of the Securities and Exchange Act of 1934, and Rule 10b-5 thereunder, in that they "tipped" or shared material nonpublic information about Florida East Coast Industries, Inc. with others whom they knew, or were reckless in not knowing, would purchase stock or stock options on the basis of that information. ("Tipping").

The SEC may attempt to prove its claims against the Defendants in any of three different ways:

First, as to Defendant Cliff Steffes, by proving that he: (i) bought or sold the securities of the corporation that employed him, (ii) on the basis of material nonpublic information and (iii) in violation of a fiduciary duty or other duty of confidentiality the Defendant owed to the corporation ("Trading"); or

Second, as to all Defendants, by proving that a Defendant: (i) provided material nonpublic information to another person, (ii) whom the Defendant knew or was reckless in not knowing would buy or sell securities on the basis of that information, (iii) the Defendant violated a fiduciary duty or other duty of confidentiality by providing the material nonpublic information to the other person, and (iv) the Defendant received a personal benefit, such as the benefit of making a gift of confidential information to a trading friend or relative ("Tipping"); or

Third, as to all Defendants, by proving that a Defendant: (i) bought or sold securities on the basis of material nonpublic information, (ii) which information was provided to him by another person, (iii) the Defendant either knew or should have known that he received this information as a result of a violation of fiduciary duty or other duty of confidentiality, and (iv) the person providing the information to the Defendant received a personal benefit, such as the benefit of making a gift of confidentiality to a trading friend or relative ("Trading").

If you find that the SEC has proved by a preponderance of the evidence each of the things required of it as to a particular Defendant, then you must find for the SEC. However, if the SEC did not prove by a preponderance of the evidence each of the things required of it as to a particular Defendant, then you must find for that Defendant.

I will now define certain terms for you.

A "security" is an investment in a business enterprise in which the investor does not participate directly. Some common types of securities include stocks, bonds and stock options. The stocks and stock options of Florida East Coast Industries, Inc. described in this case are securities.

The term "fiduciary duty" describes the duty which a person owes to another person, group or company, as part of a special relationship of trust and confidence, to act in the best interests of the other instead of his own. Such a duty can arise when a person agrees to keep information confidential. In addition, an employee is required by law to protect the confidential information of his employer both during and after his employment.

Information is "material" if there is a substantial likelihood that a reasonable investor would consider the information significant in deciding whether to buy, sell or hold a security.

A major factor in determining whether information was material is the importance attached to that information by those who knew it.

When an event such as a potential corporate merger or acquisition is uncertain, the materiality of information regarding that event depends upon a balancing of both the probability that the event will occur and the potential significance of the event.

Information is "public" if it has been disclosed to a broad segment of the investing public without favoring any special person or group.

Information is "nonpublic" if it is not available to the public through such sources as press releases, SEC filings, trade publications, analyst reports, newspapers, magazines or other sources. Nonpublic information is more specific and more private than general rumors. An insider can have nonpublic information about a specific transaction even without knowing all of the details. Whether or not the confirmation of a rumor by an insider qualifies as material nonpublic information is an issue of fact for you to decide.

In order to find the Defendants liable, the SEC must show that the Defendants acted "knowingly" or with "reckless disregard."

"Knowingly" means to act intentionally and deliberately, rather than mistakenly or inadvertently. "Reckless disregard" means conduct which is highly unreasonable and involves an extreme departure from the standard of ordinary care.

An insider does not need to possess knowledge of the ultimate fact, such as whether a corporate merger or acquisition actually will take place. A defendant may be held liable for insider trading when he obtains and acts on pieces of information which, pieced together, constitute material nonpublic information.

If you believe that a defendant was in possession of material, nonpublic information about Florida East Coast Industries, Inc., when he purchased that company's securities, then you may infer that the defendant traded on the basis of that information. However, even if you believe that a defendant was in possession of material nonpublic information, if you also believe the defendant would have made the exact same trade whether or not he possessed material nonpublic information, then you may infer that the defendant did not trade on the basis of material nonpublic information.

In deciding this case, you are to determine only whether each of the Defendants is liable for violating the laws against insider trading. This is not the kind of case in which the jury decides what legal relief the Plaintiff would be entitled to receive. That will be my responsibility if you find any or all of the Defendants liable. Accordingly, in considering whether each of the Defendants is or is not liable, you should not consider the amount of damages, civil penalties or other relief I might award to the Plaintiff.

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in, date, and sign the appropriate form.

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

The verdicts must represent the considered judgment of each juror. Your verdicts, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.