













23. Two of the PIPE securities purchase agreements signed by Lieberman contained an express warranty that the Small Cap Fund had not sold short the PIPE issuer's stock for a specific period of time before the date of the agreement. Deephaven and Lieberman breached these express warranties by shorting the PIPE issuer's stock. Moreover, Lieberman attempted to hide the short positions previously established in the Small Cap Fund by transferring them to another Deephaven fund he managed.

24. For example, the securities purchase agreement for the Neurobiological Technologies, Inc. ("NTII") PIPE offering, dated March 1, 2004 and signed by Lieberman, contained a warranty that Deephaven did not, from February 20, 2004 to at least March 1, 2004, enter into any short sales of NTII's common stock. Lieberman had, in fact, already violated this warranty when he signed the agreement. He had already sold short NTII's common stock on three separate days during the prohibited period and transferred the short positions from the Small Cap Fund to another Deephaven fund.

25. By their conduct described above, Deephaven and Lieberman breached a duty owed to the placement agent and the issuer of each of the 19 PIPE offerings.

26. As a result of Deephaven's and Lieberman's insider trading, the Small Cap Fund and another Deephaven fund made an unlawful profit.

**FIRST CLAIM – Violation of Section 17(a) of the Securities Act  
[15 U.S.C. § 77q(a)]**

27. The Commission incorporates the allegations in paragraphs 1-26 as though fully set forth in this paragraph.

28. Deephaven and Lieberman, by the conduct described above, violated Section 17(a) of the Securities Act.



(iv) directing Lieberman to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

(v) granting such other relief as this Court may deem just and equitable.

Respectfully Submitted,



Paul R. Berger (DC Bar No. 375526)  
Kevin O'Rourke (Trial Counsel-DC Bar No. 254920)  
Mark Kreitman (DC Bar No. 260828)  
Robert B. Hanson  
Janene M. Smith (DC Bar No. 455639)

Attorneys for Plaintiff  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-4010A  
(202) 551-4442 (Tel: O'Rourke)  
(202) 772-9244 (Fax: O'Rourke)  
ORourkeK@sec.gov

Dated: May 2, 2006