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CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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10  
11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 SECURITIES AND EXCHANGE  
14 COMMISSION,

15 Plaintiff,

16 vs.

17 GORDON C. BIGLER,

18 Defendant.

Case No. '08 CV 0888 H POR

COMPLAINT

19 Plaintiff Securities and Exchange Commission ("Commission") alleges as  
20 follows:

21 **JURISDICTION AND VENUE**

22 1. This Court has jurisdiction over this action pursuant to Sections  
23 21(d)(1), 21(e), 21A(a)(1), and 27 of the Securities Exchange Act of 1934  
24 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1), 78u(e), 78u-1(a)(1), & 78aa.  
25 Defendant has, directly or indirectly, made use of the means or instrumentalities of  
26 interstate commerce, of the mails, or of the facilities of a national securities  
27 exchange in connection with the transactions, acts, practices, and courses of  
28 business alleged in this Complaint.



1           7.     Liberty is a Delaware corporation headquartered in Englewood,  
2 Colorado. Liberty, through its subsidiaries, is in the media, communications, and  
3 entertainment businesses. Liberty's common stock is registered with the  
4 Commission and is traded on the NASDAQ Global Select Market under the  
5 symbol "LCAPA."

6                           **THE DEFENDANT'S FRAUDULENT CONDUCT**

7           8.     Bigler joined Provide on September 23, 2005 as director of corporate  
8 finance and investor relations.

9           9.     During the week of October 3, 2005, a Liberty senior vice president  
10 contacted Provide's chief executive officer regarding Liberty's interest in acquiring  
11 Provide.

12           10.    On or prior to the morning of November 15, 2005, Provide's chief  
13 financial officer notified Bigler of material, nonpublic information concerning the  
14 pending merger between Liberty and Provide. Subsequently, Provide's chief  
15 financial officer sent Bigler an email on November 15, 2005 at 11:11 a.m.  
16 containing additional material, nonpublic information, including an attachment  
17 setting forth Provide's five year financial forecast and Liberty's proposed  
18 acquisition price of \$33 per Provide share for the pending merger.

19           11.    On November 15, 2005, shortly after this email was sent to Bigler,  
20 Bigler purchased 4,500 shares of Provide stock at a price of \$24.28 per share, for a  
21 total purchase price of \$109,325.45.

22           12.    On December 5, 2005, Provide and Liberty announced their pending  
23 merger. Provide's stock price rose from a closing price of \$30.23 on the last  
24 trading day before the merger announcement to a closing price of \$33.76 per share  
25 on the day of the merger announcement. The trading volume rose from an average  
26 of 174,096 shares traded per day to 1,993,631 shares traded on the day of the  
27 merger announcement, a 1,045% increase from the average daily trading volume.

28           13.    On December 5, 2005, Bigler sold all 4,500 of his Provide shares for

1 \$33.56 per share, thus obtaining a total sales price of \$150,948.23. Bigler realized  
2 a profit of \$41,622.78 from this sale.

3 14. During the relevant period, Bigler was a corporate insider of Provide.  
4 Bigler made his trades in Provide stock on the basis of material, non-public  
5 information in breach of his duty of trust and confidence to Provide and its  
6 shareholders.

7 15. Bigler acted with scienter. Bigler knew, or was reckless in not  
8 knowing, that the information he learned in the November 15, 2005 email about  
9 Liberty's proposed acquisition of Provide and the price Liberty proposed to pay for  
10 Provide shares was material, non-public information. Bigler knew he owed a duty  
11 of trust and confidence to Provide and its shareholders. Despite this knowledge,  
12 Bigler purchased 4,500 shares of Provide stock on November 15, 2005 on the basis  
13 of this material, non-public information.

14  
15 **CLAIM FOR RELIEF**  
16 **FRAUD IN CONNECTION WITH THE**  
17 **PURCHASE OR SALE OF SECURITIES**  
18 **Violations of Section 10(b) of the Exchange Act**  
19 **and Rule 10b-5 Thereunder**

20 16. The Commission realleges and incorporates by reference paragraphs 1  
21 through 15 above.

22 17. Defendant Bigler, by engaging in the conduct described above,  
23 directly or indirectly, in connection with the purchase or sale of a security, by the  
24 use of means or instrumentalities of interstate commerce, of the mails, or of the  
25 facilities of a national securities exchange, with scienter:

- 26 a. employed devices, schemes, or artifices to defraud;  
27 b. made untrue statements of a material fact or omitted to state a  
28 material fact necessary in order to make the statements made,  
in the light of the circumstances under which they were made,  
not misleading; or

1 c. engaged in acts, practices or courses of business which operated  
2 or would operate as a fraud or deceit upon other persons.

3 18. By engaging in the conduct described above, defendant Bigler  
4 violated, and unless restrained and enjoined will continue to violate, Section 10(b)  
5 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §  
6 240.10b-5.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, the Commission respectfully requests that the Court:

9 **I.**

10 Issue a final judgment, in a form consistent with Fed. R. Civ. P. 65(d),  
11 permanently enjoining defendant Bigler and his agents, servants, employees, and  
12 attorneys, and those persons in active concert or participation with any of them,  
13 who receive actual notice of the final judgment by personal service or otherwise,  
14 and each of them, from violating Section 10(b) of the Exchange Act, 15 U.S.C.  
15 § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

16 **II.**

17 Order defendant Bigler to disgorge all ill-gotten gains from his illegal  
18 conduct, together with prejudgment interest thereon.

19 **III.**

20 Order defendant Bigler to pay a civil penalty under Section 21A(a) of the  
21 Exchange Act, 15 U.S.C. § 78u-1(a).

22 **IV.**

23 Retain jurisdiction of this action in accordance with the principles of equity  
24 and the Federal Rules of Civil Procedure in order to implement and carry out the  
25 terms of all orders and decrees that may be entered, or to entertain any suitable  
26 application or motion for additional relief within the jurisdiction of this Court.

27 \*

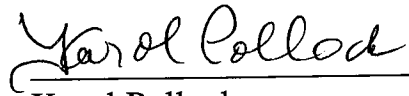
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V.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: May 19, 2008

  
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Karol Pollock  
Attorney for Plaintiff  
Securities and Exchange Commission