

EXHIBIT 4

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16 NETSCAPE COMMUNICATIONS
17 CORPORATION and AMERICA ONLINE, INC.

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

20 NETSCAPE COMMUNICATIONS
21 CORPORATION, et al.,
22
23 Plaintiffs,
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25 v.
26
27 FEDERAL INSURANCE COMPANY, et al
28
29 Defendants.

CASE NO. C-06-00198 JW (PVT)

**PLAINTIFF NETSCAPE
COMMUNICATIONS CORPORATION'S
FIRST SET OF SPECIALLY PREPARED
INTERROGATORIES TO DEFENDANT
ST. PAUL MERCURY INSURANCE
COMPANY**

Action Filed: December 12, 2005
Action Removed: January 11, 2006

1 PROPOUNDING PARTY: NETSCAPE COMMUNICATIONS CORP.

2 RESPONDING PARTY: ST. PAUL MERCURY INS. CO.

3 SET NO.: ONE [Nos. 1 - 19]

4 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiff Netscape
5 Communications Corp hereby requests that, within thirty (30) days hereof, Defendant St. Paul
6 Mercury Ins. Co. respond to each of the following interrogatories:

7 **DEFINITIONS AND INSTRUCTIONS**

8 A. "AOL" means America Online, Inc. and all PERSONS acting for, on behalf of, or
9 at the direction of AOL, including any and all AOL employees, officers, directors, agents,
10 representatives, contractors, consultants and/or attorneys who acted, in whole or in part, in one or
11 more of those capacities at any time

12 B. "IDENTIFY," when used to refer to a PERSON currently employed by ST.
13 PAUL means to state the PERSON'S: (i) Full name, and any other name by which the PERSON
14 was known or did business at any time; and (ii) job title(s), and each of them, while employed by
15 ST. PAUL (or, in the absence of a job title, a brief description of the PERSON'S position(s))

16 The term "IDENTIFY," when used to refer to a PERSON not currently employed by ST. PAUL
17 means to state the PERSON'S: (i) Full name, and any other name by which the PERSON was
18 known or did business at any time; (ii) social security number; (iii) last known business address,
19 including the name, street address and phone number of the business; (iv) last known residence
20 address, including street address and telephone number; and (v) job title(s), and each of them,
21 while employed by ST. PAUL (or, in the absence of a job title, a brief description of the
22 PERSON'S position(s)), and inclusive dates of employment with ST. PAUL.

23 C. "NETSCAPE" means Netscape Communications Corp. and all PERSONS acting
24 for, on behalf of, or at the direction of NETSCAPE, including any and all NETSCAPE
25 employees, officers, directors, agents, representatives, contractors, consultants and/or attorneys
26 who acted, in whole or in part, in one or more of those capacities at any time.

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1 D "PERSON" shall refer to any natural person, company, corporation, partnership,
2 joint venture, proprietorship, or other organization or entity

3 E "SMARTDOWNLOAD CLAIM" means any demand made by NETSCAPE
4 and/or AOL for insurance coverage in connection with the following actions and/or
5 investigations brought against NETSCAPE and/or AOL: *Specht v Netscape Communications*
6 *Corp and American Online, Inc.*, 00 CIV 4871 (S.D.N.Y.); *Weindorf v. Netscape*
7 *Communications Corp and America Online, Inc.*, No. 00 CIV 6219 (S.D.N.Y.); *Gruber v.*
8 *Netscape Communications Corp and America Online, Inc.*, No. 00 CIV 6249 (S.D.N.Y.);
9 *Mueller v. Netscape Communications Corp and America Online, Inc.*, No. 00 CIV 01723
10 (D.D.C.); and investigation by New York's Attorney General into consumer protection issues
11 associated with Netscape Communicator and/or Smartdownload.

12 F "ST. PAUL," "YOU," and "YOUR" all mean St. Paul Mercury Insurance Co and
13 all PERSONS acting for, on behalf of, or at the direction of ST. PAUL, including any and all ST.
14 PAUL employees, officers, directors, agents, representatives, contractors, consultants and/or
15 attorneys who acted, in whole or in part, in one or more of those capacities at any time.

16 G "ST. PAUL POLICY" means policy number TE 09000917 issued by ST. PAUL
17 for the period April 1, 1999 to April 1, 2000, including all declarations and endorsements
18 thereto.

19 **INTERROGATORIES**

20 1 IDENTIFY all amounts YOU paid to AOL and/or NETSCAPE in connection
21 with any claim AOL and/or NETSCAPE contended implicated the Personal Injury and/or
22 Advertising Injury coverages in the ST. PAUL POLICY. (For purposes of this Interrogatory
23 only, the term "IDENTIFY" means to state: (1) the amount paid by St. Paul; and (2) the name of
24 the claim.)

25 2 Please define "online activities."

1 3. To the extent YOUR response to the foregoing Interrogatory No. 2 varies from
2 the definition stated in the ST. PAUL POLICY'S "Personal Injury and Advertising Injury
3 Endorsement," please indicate and explain all such differences.

4 4. Please set forth what YOU contend is the commonly understood definition of
5 "online activities."

6 5. To the extent YOUR response to the foregoing Interrogatory No. 4 varies from
7 the definition stated in the ST. PAUL POLICY'S "Personal Injury and Advertising Injury
8 Endorsement," please indicate and explain all such differences.

9 6. Please describe how the SMARTDOWNLOAD CLAIM involves "online
10 activities."

11 7. Please define "non-online activities "

12 8. Please define "e-mail services "

13 9. Please define "instant messaging services."

14 10. Please define "3rd party advertising."

15 11. Please define "supplying 3rd party content."

16 12. Please define "providing internet access to 3rd parties."

17 13. As to each Request in AOL's Request for Admissions to St. Paul that ST. PAUL
18 fails to admit without qualification, identify and describe in detail the information upon which
19 ST. PAUL relies for its response.

20 14. As to each Request in AOL's Request for Admissions to St. Paul that ST. PAUL
21 fails to admit without qualification, IDENTIFY the PERSONS with knowledge upon which ST.
22 PAUL relies for its response

23 15. As to each Request in AOL's Request for Admissions to St. Paul that ST. PAUL
24 fails to admit without qualification, IDENTIFY the DOCUMENTS upon which ST. PAUL relies
25 for its response

26 16. Please set forth in full and complete detail the precise advertising injury/personal
27 injury exclusion ST. PAUL intended to include in the ST. PAUL POLICY regarding online

1 activities. (Note: Please define all terms which require definition to make the exclusion
2 conspicuous, clear, and complete.)

3 17. State the date on which YOU first realized that the ST PAUL POLICY did not
4 conform with YOUR intentions with respect to the personal injury and advertising injury
5 coverages.

6 18. IDENTIFY all inequitable conduct, misrepresentations and/or omissions by
7 Plaintiffs which YOU contend support YOUR counter-claim for reformation. (For purposes of
8 this Interrogatory, the term "IDENTIFY" means to state: (1) the inequitable conduct,
9 misrepresentation and/or omission; (2) the date on which the inequitable conduct,
10 misrepresentation and/or omission occurred; and (3) the individual(s) who engaged in the
11 inequitable conduct, misrepresentation and/or omission.)

12 19. State all facts supporting YOUR affirmative defenses.

13 Dated: July 24, 2006

ABELSON | HERRON LLP

Michael Bruce Abelson

Leslie A. Pereira

By 

Leslie A. Pereira

Attorneys for Plaintiffs

Netscape Communications Corporation and
America Online, Inc.

1 PROOF OF SERVICE

2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

4 I am over the age of 18 and not a party to the within action; I am employed by Abelson |
5 Herron, LLP in the County of Los Angeles at 333 South Grand Avenue, Suite 650, Los Angeles,
6 California, 90071-1559.

7 On July 24, 2006, I served the foregoing document(s) described as:

8 **PLAINTIFF NETSCAPE COMMUNICATIONS CORPORATION'S FIRST SET OF
9 SPECIALLY PREPARED INTERROGATORIES TO DEFENDANT ST. PAUL
10 MERCURY INSURANCE COMPANY**

11 The document(s) was served by the following means:

- 12 **BY PERSONAL SERVICE** I personally delivered the documents to the persons at the
13 addresses listed in the attached service list (1) For a party represented by an attorney,
14 delivery was made to the attorney or at the attorney's office by leaving the documents in an
15 envelope or package clearly labeled to identify the attorney being served with a receptionist
16 or an individual in charge of the office. (2) For a party, delivery was made to the party or by
17 leaving the documents at the party's residence with some person not less than 18 years of
18 age.
- 19 **BY U.S. MAIL** I enclosed the document(s) in a sealed envelope or package addressed to the
20 persons at the addresses in the attached service list and placed the sealed envelope or package
21 for collection and mailing, following our ordinary business practices. I am readily familiar
22 with this business's practice for collecting and processing correspondence for mailing. On
23 the said date, it is deposited in the ordinary course of business with the United States Postal
24 Service in a sealed envelope or package with postage fully prepaid.
- 25 **BY OVERNIGHT DELIVERY** I enclosed the documents in an envelope or package
26 provided by an overnight delivery carrier and addressed to the persons at the addresses in the
27 attached service list. I placed the envelope or package for collection and overnight delivery
28 at an office or a regularly utilized drop box of the overnight delivery carrier.
- BY MESSENGER SERVICE** I enclosed the documents in an envelope or package
addressed to the persons in the attached service list and provided them to a professional
messenger service for service. *(A declaration by the messenger is contained in the
Declaration of Messenger below)*
- BY FACSIMILE TRANSMISSION** Based on an agreement of the parties to accept service
by fax transmission, I faxed the documents to the persons at the fax numbers listed in the
attached service list. Our facsimile activity report indicated that all pages were transmitted
successfully. No error was reported by the fax machine that I used.
- BY E-MAIL OR ELECTRONIC TRANSMISSION** Based on the court order or an
agreement of the parties to accept service by e-mail or electronic transmission, I caused the
documents to be sent to the persons at the e-mail addresses listed on the attached service list.
I did not receive, within a reasonable time after the transmission, any electronic message or
other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of United States of America that the
foregoing is true and correct.

Executed on July 24, 2006 at Los Angeles, California.



Soonja Bin

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SERVICE LIST

Netscape Communications Corporation, et al. v. Federal Insurance Company, et al.

USDC Case No.: C-06-00198 JW (PVT)

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ST. PAUL MERCURY INSURANCE COMPANY