

EXHIBIT 8

1 SARA M. THORPE (SBN 146529)
sthorpe@gordonrees.com
2 D. CHRISTOPHER KERBY (SBN 124546)
ckerby@gordonrees.com
3 GORDON & REES LLP
Embarcadero Center West
4 275 Battery Street, Suite 2000
San Francisco, CA 94111
5 Telephone: (415) 986-5900
Facsimile: (415) 986-8054
6

7 Attorneys for Defendant
ST. PAUL MERCURY
INSURANCE COMPANY
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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

11 NETSCAPE COMMUNICATIONS
CORPORATION, a Delaware corporation;
12 and AMERICA ONLINE, INC., a Delaware
corporation;
13

14 Plaintiffs,

15 v.

16 FEDERAL INSURANCE COMPANY, an
Indiana corporation; ST. PAUL MERCURY
INSURANCE COMPANY, a Minnesota
17 corporation; EXECUTIVE RISK
SPECIALTY INSURANCE COMPANY; a
Connecticut corporation, and DOES 1
18 through 50,

19 Defendants.
20

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

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

Complaint Filed: 12/12/05
Amended Complaint Filed: 2/24/06

21 PROPOUNDING PARTY: Plaintiff NETSCAPE COMMUNICATIONS CORPORATION

22 RESPONDING PARTY: Defendant ST. PAUL MERCURY INSURANCE COMPANY

23 SET NO.: ONE [1]

24 Defendant ST. PAUL MERCURY INSURANCE COMPANY ("ST. PAUL") submits
25 the following supplemental response to plaintiff NETSCAPE COMMUNICATIONS
26 CORPORATION'S ("NETSCAPE") first set of specially prepared interrogatories ("the
27 interrogatories").
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Gordon & Rees LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111

SUPPLEMENTAL RESPONSE TO SPECIAL INTERROGATORIES

1
2 ST. PAUL supplements its response to Interrogatories 13, 14 and 15 as they
3 specifically relate to Request for Admission No. 4 as follows:

4 **REQUEST FOR ADMISSION NO. 4:**

5 Admit that the SMARTDOWNLOAD CLAIM does not involve "3rd party
6 advertising."

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

8 Admit.

9 **SUPPLEMENTAL RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

10 Based upon the information provided to St. Paul at the time the class
11 action suits and AG Investigation involving the SmartDownload product were
12 tendered to St. Paul the response was: ADMIT.

13 St. Paul objects to the consideration of or admission of any information
14 that was not provided to St. Paul at the time the class action suits and AG
15 Investigation involving the SmartDownload product were tendered to St. Paul.
16 Such information is irrelevant and contrary to Virginia and California law. Fed.
17 Rule of Evid. 401, 402. See, e.g., *Resource Bankshares Corp. v. St. Paul*
18 *Mercury Ins. Co.*, 407 F.3d 631, 636 (4th Cir. 2005) (applying Va. Law); *America*
19 *Online, Inc. v. St. Paul Mercury Ins. Co* 347 F.3d 89, 93 (4th Cir. 2003); *Waller v.*
20 *Truck Ins. Exchg.*, 44 Cal.Rptr.2d 370, 378 (Cal. 1995); *Safeco Ins. Co. v. Parks*,
21 19 Cal.Rptr.3d 17, 24-25, 27 (Cal.App. 2004); *Haggerty v. Federal Ins. Co.*, 32
22 Fed.Appx. 845, 848 (9th Cir. 2002). St. Paul further objects to the term "involve"
23 as vague and ambiguous such that Request for Admission No. 4 cannot be
24 meaningfully answered.

25 Subject to these objections, St. Paul further responds as follows. Based
26 upon the new information plaintiffs provided during discovery in this coverage
27 lawsuit and in the arguments now being advanced in support of their motion for
28 partial summary judgment, the response to the request is: DENY.

Go Rees LLP
Emb. o Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111

1 **SPECIAL INTERROGATORY NO. 13:**

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

5 **SUPPLEMENTAL RESPONSE TO SPECIAL INTERROGATORY NO. 13:**

6 Subject to and without waiving the General Objections in response to the original
7 request, and the Objections set forth above, the documents upon which St. Paul relies
8 include the complaints in the underlying lawsuits, the AG investigation letters, ST.
9 PAUL's claim files, the ST. PAUL policy, ST. PAUL's underwriting file, documents
10 produced by Marsh and AOL, new information produced by plaintiffs during the course
11 of this coverage litigation, and the declarations and exhibits upon which plaintiffs rely
12 and arguments advanced by plaintiffs in support of plaintiffs' cross-motion for partial
13 summary judgment (all of which plaintiffs' counsel already have in their possession).

14 **SPECIAL INTERROGATORY NO. 14:**

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

18 **SUPPLEMENTAL RESPONSE TO SPECIAL INTERROGATORY NO. 14:**

19 Subject to the General Objections and above noted Objections, Dan Weiss.

20 **SPECIAL INTERROGATORY NO. 15:**

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

24 **SUPPLEMENTAL RESPONSE TO SPECIAL INTERROGATORY NO. 15:**

25 Subject to and without waiving the General Objections in response to the original
26 request, and the Objections set forth above, the documents upon which St. Paul relies
27 include the complaints in the underlying lawsuits, the AG investigation letters, ST.
28 PAUL's claim files, the ST. PAUL policy, ST. PAUL's underwriting file, documents

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Emb. o Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111

1 produced by Marsh and AOL, new information produced by plaintiffs during the course
2 of this coverage litigation, and the declarations and exhibits upon which plaintiffs rely
3 and arguments advanced by plaintiffs in support of plaintiffs' cross-motion for partial
4 summary judgment (all of which plaintiffs' counsel already have in their possession).

5 Dated: February 15, 2007

GORDON & REES LLP

6
7 By: *Sara M. Thorpe*
8 Sara M. Thorpe
9 Attorneys for Defendant
10 ST. PAUL MERCURY
11 INSURANCE COMPANY

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Gordon & Rees LLP
Embassy Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111

02/15/2007 15:39

651-310-8272

SPC-CLAIM FAX

PAGE 05

VERIFICATION

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I, Aaron Latto, declare:

1. I am 2nd Vice President, Business Insurance Claim, employed by Travelers Indemnity Company and authorized to make this Verification on behalf of St. Paul Mercury Insurance Company, defendant in this lawsuit ("St. Paul").

2. I have read St. Paul's SUPPLEMENTAL RESPONSE TO PLAINTIFF NETSCAPE COMMUNICATIONS CORPORATION'S FIRST SET OF SPECIALLY PREPARED INTERROGATORIES, and know the contents thereof. To the extent I have personal knowledge of the matters set forth therein, the same are true and correct. To the extent said matters are a composite of information from a number of individuals or documents or I do not have personal knowledge thereof, I am informed and believe that the information set forth therein for which I lack personal knowledge is true and correct.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 15th day of February, 2007, in St. Paul, Minnesota.


AARON LATTO

Gordt, Jones LLP
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111

02/15/07
15:39

PROOF OF SERVICE

Netscape Communications Corp., v. Federal Ins. Co., et al. Case No. C-06 00198 JW

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Embarcadero Center West, 275 Battery Street, Suite 2000, San Francisco, CA 94111. On the date noted below, I served the within document(s):

Defendant St. Paul Mercury Insurance Company's Supplemental Response To Plaintiff Netscape Communications Corporation's First Set of Specially Prepared Interrogatories

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing a true copy of the document(s) listed above in a sealed envelope with postage thereon fully prepaid or provided for, at a station designated for collection and processing of envelopes and packages for mailing with the United States Post Office, addressed as set forth below.
- by placing a true copy of the document(s) listed above in a sealed envelope with postage thereon fully prepaid or provided for, at a station designated for collection and processing of envelopes and packages for mailing by overnight delivery by FedEx, addressed as set forth below
- by transmitting via the internet the document(s) listed above to the email address(es) set forth below.

Attys for Plaintiffs:
 Michael Bruce Abelson, Esq
 Leslie A. Pereira
 ABELSON HERRON LLP
 333 South Grand Ave., Suite 650
 Los Angeles, CA 90071-1559

Attys for Plaintiffs:
 Daniel J. Bergeson, Esq.
 Marc G. Van Niekerk
 BERGESON, LLP
 303 Almaden Blvd., Suite 500
 San Jose, CA 95110-2712

mabelson@abelsonherron.com
lpereira@abelsonherron.com
 (213) 402-1900 ph
 (213) 402-1901 fax

dbergeson@be-law.com
mvanniekerk@be-law.com
 (408) 291-6200 ph
 (408) 297-6000 fax

(Via FedEx)

(Via U.S. Mail)

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service and Fed Ex on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 15, 2007, at San Francisco, California.



 Pamela Cody

Go Rees LLP
 Embld Center West
 275 Battery Street, Suite 2000
 San Francisco, CA 94111