SARA M. THORPE (SBN 146529) 1 sthorpe@gordonrees.com D. CHRISTOPHER KERBY (SBN 124546) 2 ckerby@gordonrees.com GORĎŎŇ & REES LLP 3 **Embarcadero Center West** 275 Battery Street, Suite 2000 4 San Francisco, CA 94111 Telephone: (415) 986-5900 5 Facsimile: (415) 986-8054 6 Attorneys for Defendant ST. PAUL MERCURY INSURANCE COMPANY 7 UNITED STATES DISTRICT COURT 8 NORTHERN DISTRICT COURT OF CALIFORNIA 9 SAN JOSE DIVISION 10 CASE NO. 5:06-CV-00198 JW (PVT) NETSCAPE COMMUNICATIONS 11 CORPORATION, a Delaware corporation; STIPULATION AND [PROPOSED] 12 ORDER REGARDING REVISED AMERICAN ONLINE, INC., a Delaware 275 Battery Street, Suite 2000 SCHEDULE FOR PHASE I corporation, 13 San Francisco, CA 94111 Gordon & Rees LLP Plaintiffs, 14 VS. Complaint Filed: 12/12/05 15 Amended Complaint: 2/24/06 FFDERAL INSURANCE COMPANY, an Indiana corporation; et al., 16 Defendants. 17 18 COMES NOW the parties, by and through their respective counsel, and stipulate 19 as follows: 20 The parties have been working diligently to conduct discovery of Phase I 21 1. 22 issues in order to file cross-motions for summary judgment. 23 The parties have also been meeting and conferring extensively to resolve 2. 24 discovery disputes so as to avoid discovery motion practice if possible, and to this point 25 have been successful. 26 To date, St. Paul has taken three depositions in Washington DC, Missouri, 3. 27 and New York, respectively. The parties anticipate there will be at least eight additional 28 STIPULATION AND [PROPOSED] ORDER REGARDING REVISED SCHEDULE FOR PHASE I

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depositions to take in the case, most likely in New York and Minnesota.

- Because of summer vacation schedules of counsel and witnesses, and 4. the timing of obtaining written and document discovery responses from the parties and third party witnesses, discovery is taking longer than originally anticipated, but should not take too much longer. The parties are working amicably in connection with the scheduling of party and 3rd party depositions.
- Counsel for St. Paul has a trial for three weeks starting October 16, 2006 5. which is very likely to go.
- The present hearing date for the parties' cross-motions for summary 6. judgment is November 20, 2006, pursuant to Case Management Order entered June 19, 2006.
- Based upon the foregoing, the parties stipulate and agree to, and request 7. that the Court enter an Order permitting, a revision to the discovery and motion practice schedule in Phase I of this case as follows:
 - Original Schedule proposed by parties: a.
 - September 20, 2006 St. Paul file summary judgment motion(s);
 - October 11, 2006 AOL/Netscape file opposition/cross-motion;
 - October 24, 2006 St. Paul file reply/opposition;
 - November 6, 2006 AOL/Netscape file reply; and
 - November 20 Hearing on motion(s).
 - Requested Revised Schedule: b.
 - October 20, 2006 Conclude all deposition, written, and document discovery relating to Phase I issues;

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CHRISTOPHER KERBY Attorneys for Plaintiffs The TSCAPE COMMANUNICATIONS CORPORATION, AMERICAN ONLINE, INC. ORDER This Court having considered the parties' stipulation set forth above, and good cause appearing. IT IS ORDERED THAT the Phase I schedule in this matter is revised as follows: October 20, 2006 - St. Paul file motion for summary judgment; December 1, 2006 - Plaintiffs file cross-motion/opposition;	December 1, 2006 - Plaintiffs file cross-motion/opposition; December 22, 2006 - St. Paul file opposition/reply; January 22, 2007 - Plaintiffs file reply; and February 12, 2007 - Hearing date on motion(s) IT IS SO STIPULATED. Dated: August 30, 2006 GORDON & REES LLP By: D. CHR/STOP/ER KERBY Attorneys for Defendant ST. PAUL MERCURY INSURANCE COMPANY ABELSON HERRON LP By: LESLIE A, PEREIRA Attorneys for Plaintiffs NETSCAPE COMMMUNICATIONS CORPORATION, AMERICAN ONLINE, INC. ORDER This Court having considered the parties' stipulation set forth above, and good cause appearing. 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