

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 Attorneys for Defendant
 7 ST. PAUL MERCURY INSURANCE COMPANY

8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT COURT OF CALIFORNIA**
 10 **SAN JOSE DIVISION**

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

11 NETSCAPE COMMUNICATIONS
 CORPORATION, a Delaware corporation;
 12 and
 AMERICAN ONLINE, INC., a Delaware
 13 corporation,
 14 Plaintiffs,
 15 vs.
 16 FEDERAL INSURANCE COMPANY, an
 Indiana corporation; et al.,
 17 Defendants.

CASE NO. 5:06-CV-00198 JW (PVT)
**STIPULATION AND [PROPOSED]
 ORDER REGARDING REVISED
 SCHEDULE FOR PHASE I**

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

18
 19 COMES NOW the parties, by and through their respective counsel, and stipulate
 20 as follows:

- 21 1. The parties have been working diligently to conduct discovery of Phase I
- 22 issues in order to file cross-motions for summary judgment.
- 23 2. The parties have also been meeting and conferring extensively to resolve
- 24 discovery disputes so as to avoid discovery motion practice if possible, and to this point
- 25 have been successful.
- 26 3. To date, St. Paul has taken three depositions in Washington DC, Missouri,
- 27 and New York, respectively. The parties anticipate there will be at least eight additional
- 28

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

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

2 4. Because of summer vacation schedules of counsel and witnesses, and
3 the timing of obtaining written and document discovery responses from the parties and
4 third party witnesses, discovery is taking longer than originally anticipated, but should
5 not take too much longer. The parties are working amicably in connection with the
6 scheduling of party and 3rd party depositions.
7

8 5. Counsel for St. Paul has a trial for three weeks starting October 16, 2006
9 which is very likely to go.

10 6. The present hearing date for the parties' cross-motions for summary
11 judgment is November 20, 2006, pursuant to Case Management Order entered June
12 19, 2006.

13 7. Based upon the foregoing, the parties stipulate and agree to, and request
14 that the Court enter an Order permitting, a revision to the discovery and motion practice
15 schedule in Phase I of this case as follows:
16

17 a. Original Schedule proposed by parties:

- 18 • September 20, 2006 – St. Paul file summary judgment
- 19 motion(s);
- 20 ▪ October 11, 2006 - AOL/Netscape file opposition/cross-motion;
- 21 ▪ October 24, 2006 – St. Paul file reply/opposition;
- 22 ▪ November 6, 2006 - AOL/Netscape file reply; and
- 23 ▪ November 20 - Hearing on motion(s).

24 b. Requested Revised Schedule:

- 25 • October 20, 2006 - Conclude all deposition, written, and
- 26 document discovery relating to Phase I issues;
- 27
- 28

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


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- November 8, 2006 - St. Paul file motion for summary judgment;
- 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. CHRISTOPHER KERBY
 Attorneys for Defendant ST. PAUL
 MERCURY INSURANCE COMPANY

Dated: August 30, 2006

ABELSON HERRON LP

By: 
 LESLIE A. PEREIRA
 Attorneys for Plaintiffs NETSCAPE
 COMMUNICATIONS 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 - Conclude all deposition, written, and document discovery

relating to Phase I issues;

November 8, 2006 - St. Paul file motion for summary judgment;

December 1, 2006 - Plaintiffs file cross-motion/opposition;

December 22, 2006 - St. Paul file opposition/reply;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

January 22, 2007 - Plaintiffs file reply; and
February 12, 2007 - Hearing date on motions.

Dated: 8/31/06



JAMES WARE
United States District Judge

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