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15 Attorneys for Plaintiffs
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 Plaintiffs,

23 v.

24 FEDERAL INSURANCE COMPANY, et al.

25 Defendants.

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

**PLAINTIFF AMERICA ONLINE, INC.'S
NOTICE OF DEPOSITION TO
DEFENDANT ST. PAUL MERCURY
INSURANCE COMPANY [F.R.C.P.
30(b)(6)]**

Action Filed: December 12, 2005

Action Removed: January 11, 2006

1 TO EACH PARTY AND TO EACH ATTORNEY OF RECORD IN THIS ACTION:

2 YOU ARE HEREBY NOTIFIED THAT THE DEPOSITION of ST PAUL MERCURY
3 INSURANCE COMPANY will be taken at Time Warner Inc., One Time Warner Center, New
4 York, New York, commencing at 9:00 a.m. on September 21, 2006 and continuing from day to
5 day thereafter.

6 YOU ARE FURTHER NOTIFIED THAT the deponent is not a natural person. The
7 matters on which the deponent will be examined are as follows:

8 **DEFINITIONS AND INSTRUCTIONS**

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

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

17 C. "SMARTDOWNLOAD CLAIM" means any demand made by NETSCAPE
18 and/or AOL for insurance coverage in connection with the following actions and/or
19 investigations brought against NETSCAPE and/or AOL: *Specht v. Netscape Communications*
20 *Corp. and American Online, Inc.*, 00 CIV 4871 (S.D.N.Y.); *Weindorf v Netscape*
21 *Communications Corp. and America Online, Inc.*, No. 00 CIV 6219 (S.D.N.Y.); *Gruber v*
22 *Netscape Communications Corp. and America Online, Inc.*, No. 00 CIV 6249 (S.D.N.Y.);
23 *Mueller v Netscape Communications Corp. and America Online, Inc.*, No. 00 CIV 01723
24 (D.D.C.); and investigation by New York's Attorney General into consumer protection issues
25 associated with Netscape Communicator and/or Smartdownload.

26 D. "ST PAUL," "YOU," and "YOUR" all mean St. Paul Mercury Insurance Co. and
27 all PERSONS acting for, on behalf of, or at the direction of ST. PAUL, including any and all ST.

PAUL employees, officers, directors, agents, representatives, contractors, consultants and/or attorneys who acted, in whole or in part, in one or more of those capacities at any time.

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

F. "UNDERLYING LAWSUITS" means the following actions and/or investigations brought against NETSCAPE and/or AOL: *Specht v Netscape Communications Corp and American Online, Inc.*, 00 CIV 4871 (S.D.N.Y.); *Weindorf v. Netscape Communications Corp and America Online, Inc.*, No. 00 CIV 6219 (S.D.N.Y.); *Gruber v Netscape Communications Corp and America Online, Inc.*, No. 00 CIV 6249 (S.D.N.Y.); *Mueller v Netscape Communications Corp and America Online, Inc.*, No. 00 CIV 01723 (D.D.C.); and investigation by New York's Attorney General into consumer protection issues associated with Netscape Communicator and/or Smartdownload.

TOPICS FOR EXAMINATION

1. The underwriting of the ST. PAUL POLICY
2. The scope of coverage provided by ST. PAUL'S technology commercial general liability policy.
3. The formulation of the "personal injury liability" language in the technology commercial general liability policy.
4. All changes to the language of the "personal injury liability" coverage in ST. PAUL'S technology commercial general liability policy since 1985.
5. All changes to the language of the "personal injury liability" coverage in ST. PAUL'S commercial general liability policy since 1985.
6. The meaning of the ST. PAUL POLICY'S "personal injury liability" provisions.
7. The meaning of the following "personal injury offense" in the ST. PAUL POLICY: "Making known to any person or organization written or spoken material that violates a person's right of privacy "

8. The meaning of the ST. PAUL POLICY'S "Deliberately breaking the law" exclusion.

9. The meaning of the ST. PAUL POLICY'S "Personal Injury and Advertising Injury Endorsement" (Processing Date 10/05/00).

10. The negotiating history concerning, and ultimate acceptance by ST. PAUL, of the ST. PAUL POLICY'S "Personal Injury and Advertising Injury Endorsement" (Processing Date 10/05/00).

11. The ST. PAUL employees who had responsibility for final approval of the "Personal Injury and Advertising Injury Endorsement" (Processing Date 10/05/00) to the ST. PAUL POLICY.

12. The scope of Advertising Injury/Personal Injury coverage originally intended to be included in the ST. PAUL POLICY.

13. ST. PAUL'S discovery that the terms of the ST. PAUL POLICY did not comport with the parties' original agreement for coverage.

14. The SMARTDOWNLOAD CLAIM.

15. ST. PAUL'S denial of coverage for the SMARTDOWNLOAD CLAIM.

16. The ST. PAUL claim file pertaining to the SMARTDOWNLOAD CLAIM.

17. ST. PAUL'S investigation of the SMARTDOWNLOAD CLAIM.

18. The ST. PAUL POLICY'S "Personal Injury and Advertising Injury for Non-Online Activities Endorsement."

19. The nature and operation of the NETSCAPE products at issue in the UNDERLYING LAWSUITS.

20. Other non-automobile claims submitted by AOL under the terms of the ST. PAUL POLICY.

21. ST. PAUL'S payment in connection with any other non-automobile claims submitted by AOL under the terms of the ST. PAUL POLICY.

22. Other insurance policies issued by ST. PAUL which include the either the phrase
“online activities” or the phrase “non-online activities ”

23 ST. PAUL’S responses to NETSCAPE’S First Set of Specially-Prepared
Interrogatories.

24 ST. PAUL’S responses to AOL’s First Set of Requests for Admission

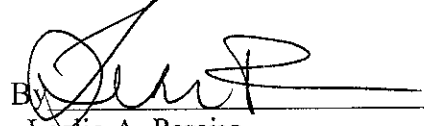
25 ST. PAUL’S responses to AOL’S First Set of Specially-Prepared Interrogatories.

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

PROOF OF SERVICE

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

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

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

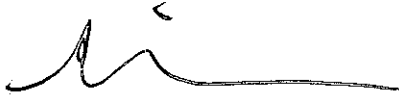
**PLAINTIFF AMERICA ONLINE INC.'S NOTICE OF DEPOSITION TO
DEFENDANT ST. PAUL MERCURY INSURANCE COMPANY [F.R.C.P. 30(b)(6)]**

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

- ☐ **BY PERSONAL SERVICE** I personally delivered the documents to the persons at the addresses listed in the attached service list. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age.
- ☐ **BY U.S. MAIL** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses in the attached service list and placed the sealed envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the said date, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope or package with postage fully prepaid.
- ☒ **BY OVERNIGHT DELIVERY** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in the attached service list. I placed the envelope or package for collection and overnight delivery 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

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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