



1 Exhibit A: Glenn Spencer, taken August 15, 2006.

2 Exhibit B: Nancy Perkins, taken August 3, 2006.

3 Exhibit C: George Bannell, taken August 18, 2006.

4 Exhibit D: Alejandra Evans, taken October 12, 2006.

5 Exhibit E: Michele Midwinter, taken September 7, 2006.

6 Exhibit F: Daniel Weiss, taken October 5 and November 7, 2006.

7 4. Documents have been produced in this case by the parties with their initial  
8 disclosures and in response to discovery requests, and documents have been produced by third  
9 parties in response to subpoenas. The documents produced have been designated by bates  
10 numbers as follows:

11 "NET/SDL" are documents produced by AOL and Netscape in this case.

12 "AOL" are documents produced by AOL to St. Paul coverage litigation AOL filed in  
13 Virginia in 2002.

14 "SPM" are document produced by St. Paul in this case.

15 "SP" are documents produced by St. Paul to AOL in the coverage litigation in Virginia.

16 "MARSH" are document produced by Marsh in this case (and in the coverage litigation  
17 in Virginia). See Affidavit of Marsh Custodian of Records filed with this motion.

18 5. California's appellate court should shortly rule on this same policy language.  
19 Judge Robert L. Hess of the Los Angeles County Superior Court held in an unsolicited fax case  
20 involving St. Paul's policy language that a complaint which did not allege dissemination of  
21 private facts could not withstand demurrer. *ACS Systems v. St. Paul Fire & Marine Ins. Co.*, Los  
22 Angeles County Superior Court, Case No. BC 305455. I am informed and believe that case has  
23 been briefed and was argued before the Second Appellate District Court – Division 3, on July 18,  
24 2006.

25 Executed this 1st day of December 2006 in San Francisco, California.

26   
27 SARA M. THORPE  
28

# EXHIBIT “C”

1  
2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION  
4

5 ----- )

NETSCAPE COMMUNICATIONS )

6 CORPORATION, ET AL., )

7 Plaintiffs, )

8 vs. )

Civil Action No.

) C-06-00198 JW(PVI)

9 FEDERAL INSURANCE )

COMPANY, ET AL., )

10 Defendants. )

11 \_\_\_\_\_ )  
12  
13 DEPOSITION OF GEORGE BANNELL

14 New York, New York

15 Friday, August 18, 2006  
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23

24 Reported By:

25 Sandra Noel Bartels

August 18, 2006

8:00 a.m.

Deposition of GEORGE BANNELL, held at the  
offices of GORDON & REES, LLP, One Liberty Plaza,  
New York, New York, pursuant to Subpoena, before  
Sandra Noel Bartels, a certified court reporter  
and Notary Public of the State of New York.

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25 BY: JONATHAN P. WOLFERT, ESQ.

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-----I N D E X-----

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BANNELL

the binder and the issuance of the policy?

A. The binder needs to be signed and executed by the insurance company who may or may not agree with it. Again, I don't remember this specific placement seven years ago, but that is the generally process as to how it was conducted.

Q. Then do you stay involved after the policy is issued?

A. I do not.

Q. Generally.

A. Generally. 99.9 percent of the time I do not.

Q. You've referred to your office versus the local Marsh office. First of all, where is your office located in 1999?

A. 1166 Avenue of the Americas, here in New York.

Q. In 1999 what local Marsh office where you working with in connection with the AOL insurance placement?

A. Washington, D. C.

Q. I will give you some documents to hopefully refresh your memory about what happened seven years ago. Let me start with what we marked

1 BANNELL

2 Q. What do you mean by "online activity"?

3 A. On or through the internet.

4 Q. Was that your understanding in 1999 as to  
5 what "on line" meant?

6 MR. WOLFERT: Objection to form.

7 THE WITNESS: I don't recall what my  
8 definition of "on line" was in 1999, but it  
9 probably would have been similar

10 BY MS. THORPE:

11 Q. Similar to what you just said, which is  
12 on or through the internet?

13 A. Yes.

14 Q. Was it your understanding that AOL was  
15 involved in online activity?

16 A. Again, I don't recall what my  
17 understanding was in 1999, but if I had to hazard a  
18 response I would say I would think so, yes.

19 Q. As part of your procedure in providing  
20 information to carriers did you review the  
21 submission to the carriers?

22 A. As a general procedure I would, yes.  
23 Time permitting.

24 Q. Let me hand you what we previously was  
25 marked as Exhibit 6, which is MARSH 1022 through

BANNELL

A. It does not.

Q. If you refer back to Page 340 in this document --

A. In this Exhibit 19?

Q. Yes. It has auto and general liability special claims handling specifications. Do you recall discussing those with St. Paul?

A. I do not.

Q. Are claims specifications something that an insurance company requires or sometimes requires in connection with placement of insurance coverage?

MR. WOLFERT: Objection to form.

THE WITNESS: No, they are usually something that we as a broker and or client would request.

BY MS. THORPE:

Q. What is the purpose in requesting claims specifications?

A. Generally speaking?

Q. Yes.

A. To ensure that in the event of a claim certain procedures are executed or handled appropriately in accordance with best prospects for a favorable resolution for our clients.

1 BANNELL

2 A. Not that I can recall, no.

3 Q. Let me have you take a few minutes and  
4 review it.

5 A. Okay.

6 Q. Now having reviewed that document, does  
7 that refresh your memory about ever having seen a  
8 copy of it?

9 A. No, I don't recall ever seeing this  
10 before today.

11 Q. Under Mr. Spencer's e-mail, under the  
12 "sum background, he refers to the concern of GL  
13 underwriters about providing quasi professional  
14 coverage under the GL. Quote, They didn't feel  
15 comfortable with our online risk, end quote.

16 Do you see that reference?

17 A. I do.

18 Q. Does that refresh your memory at all  
19 about the concern of the GL carriers in 1999-2000  
20 time period in insuring online risk?

21 A. No. Again, as I mentioned, generally  
22 speaking, not relative to AOL, the online dynamic  
23 was relatively new to the insurance marketplace at  
24 that time. The ability to underwrite and quantify  
25 and price for exposures at that time was a nebulous

1 BANNELL

2 endeavor because actuarial data didn't exist, nor  
3 did the mechanism whereby underwriters had the  
4 ability to loss control and appropriately underwrite  
5 that type of exposure.

6 So, in general, the response to your  
7 question was online activities of a concern to the  
8 insurance marketplace in 1999? I would think so,  
9 yes.

10 Q. So do you agree with his statement there  
11 that in '99 GL carriers were not comfortable with  
12 AOL online risks?

13 MR. WOLFERT: Objection to form.

14 THE WITNESS: I can't agree or disagree  
15 with it because I don't know the context or his  
16 history with respect to how he wrote it or what  
17 his intentions were.

18 Again, as I answered in the last  
19 question, casualty underwriters had concerns  
20 about online exposures for insureds back in 1999.

21 BY MS. THORPE:

22 Q. And what do you recall about that  
23 concern, what was it about online exposures that  
24 caused them concern? And I don't mean the pricing  
25 as far as underwriting the loss control, what on

**EXHIBIT “D”**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

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

Plaintiff,

VS.

ST. PAUL MERCURY INSURANCE  
COMPANY, a Minnesota  
corporation,

Defendant.

Case No. C06-00198JW(PVT)

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DEPOSITION OF ALEJANDRA EVANS,  
taken on behalf of the defendants at 101 West  
Broadway, Suite 1600, san Diego, California  
commencing at 12:57 p.m., Thursday, October 12,  
2006, before Karla Meyer Baez, RPR-CRR,  
Certified Shorthand Reporter, No. 4506.

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NOTE: EXHIBITS NOT ATTACHED, RETAINED BY COUNSEL

1 Q. Have you held any other positions at Wachovia?

2 A. No.

3 Q. Before 2003 where were you employed?

4 A. I was employed by Marsh.

5 Q. How long were you an employee of Marsh?

6 A. Approximately eight years.

7 Q. So from 1995 to 2003?

8 A. From 1996 through -- yeah, through 2003. So  
9 seven years.

10 Q. Where are -- is your office now with Wachovia?

11 A. Washington, D.C.

12 Q. And when you were with Marsh were you in their  
13 Washington, D.C. office?

14 A. Yes.

15 Q. Did you have one title or many titles while you  
16 were with Marsh?

17 A. I had several titles.

18 Q. Okay. Can you quickly go through from --  
19 starting with 1996 what your titles were.

20 A. I began as a senior broker in the property and  
21 casualty department, and my next title was client  
22 executive and team leader.

23 Q. Do you recall when you became a client  
24 executive team leader?

25 A. Uh-huh.

1 Q. What year?

2 A. That was probably a year after I had arrived at  
3 Marsh. It wasn't too long.

4 And then a year after that I became the  
5 property and casualty practice leader.

6 Q. Do you recall what year you became the property  
7 and casualty --

8 A. 1998.

9 Q. What was the title of that again?

10 A. Property and casualty practice leader.

11 Q. What were the responsibilities of a client  
12 executive in 1999 -- 1997?

13 A. The responsibilities were to manage the client  
14 relationship and to ensure that the technical resources  
15 within Marsh were utilized on the client's behalf.

16 Q. Do you recall that you were a part of a team at  
17 Marsh that had AOL as a client?

18 A. Yes.

19 Q. Do you recall when -- what time period you  
20 had -- were on that team with AOL as a client?

21 A. I don't.

22 Q. Do you recall if it was for one year of  
23 coverage or if it was for multiple years of coverage?

24 A. I don't remember.

25 Q. In 1997 when you were -- well, I'll give you

1 purposes of a renewal that was going to take place on  
2 April 1, '99?

3 A. I don't recall that.

4 Q. Does looking at this list of attendees, even if  
5 you don't remember the time period, refresh your memory  
6 that you were on a AOL team where you were the client  
7 executive?

8 A. Yes.

9 Q. Do you remember who else was on your team?

10 A. Some of the people identified in the document.

11 Q. And that would be Nancy Hesson who is also  
12 known as Nancy Perkins?

13 A. Yes.

14 Q. And Glen Spencer?

15 A. Yes.

16 Q. Do you remember what Nancy Hesson Perkins, her  
17 role was?

18 A. She was the broker on the account.

19 Q. Do you recall if she was responsible for a  
20 particular line of coverage?

21 A. She was responsible for the property and  
22 casualty lines.

23 Q. And do you remember that there was a Lisa  
24 Conway involved?

25 A. Yes.

1 Q. And do you remember what her responsibility  
2 was?

3 A. She was responsible for the financial product  
4 lines.

5 Q. Do you remember Glen Spencer's role?

6 A. Yes.

7 Q. What was his role?

8 A. He served in the capacity of senior client  
9 advocate.

10 Q. And what did that mean?

11 A. Senior access relationship to the client.

12 Q. So he's the one that would have the contact  
13 with AOL?

14 A. Not exclusively.

15 Q. What types of matters would he be the one  
16 communicating with AOL about, in a general sense?

17 A. In a general sense he would probably be  
18 involved in some senior strategic discussions as well as  
19 client satisfaction-related issues.

20 Q. Did you also have direct client contact with  
21 AOL?

22 A. Yes.

23 Q. Do you recall what -- who the people were at  
24 AOL that you had direct contact with?

25 A. Yes.

1 Q. Who were they?

2 A. I had direct contact with Lori O'Connell and  
3 Dave Prince and Keith Braly.

4 Q. Do you remember being involved on the AOL  
5 account for more than one renewal period?

6 A. I don't remember.

7 Q. This document relates to renewal and you'll see  
8 it later in the documents. That was for April 1, '99.

9 Do you recall from looking at this whether you  
10 were involved in the prior year's policy?

11 A. I don't recall that.

12 Q. And do you recall being taken off the AOL  
13 account and moving to other functions for the April 2000  
14 policy renewal?

15 A. I recall being taken off of the AOL account. I  
16 don't remember the time.

17 Q. Do you recall George Bannell being involved in  
18 the AOL account?

19 A. I do.

20 Q. Do you recall what his role was?

21 A. Yes.

22 Q. What was he doing?

23 A. George was a global broking advisor on the  
24 account.

25 Q. And what did that mean he was responsible for

1 doing?

2 A. He was responsible for accessing the markets on  
3 AOL's behalf.

4 Q. Locating insurance companies that would be  
5 interested in issuing policies or providing proposals  
6 for policies?

7 A. Yes.

8 Q. Do you recall that with the April '99 renewal  
9 there was a shift in what was going to be proposed as an  
10 insurance program for AOL taking some of the traditional  
11 general liability exposures and having them covered by a  
12 media policy?

13 A. I don't recall.

14 Q. Let me show you more documents then. I'm going  
15 to hand you what I've marked as 160, which is a  
16 March -- let me make sure which one -- March 11, 1999  
17 letter from Marsh, and it shows you up in the left-hand  
18 corner of the letter to Lori O'Connell at AOL. It's  
19 marked AOL 480001 through 4.

20 (Deposition Exhibit 160 was marked for  
21 identification)

22 BY MS. THORPE:

23 Q. Can you take a look at that letter and first of  
24 all let me know if you recall writing that letter.

25 A. I do recall writing the letter.

1 MR. ABELSON: The question lacks foundation, is  
2 vague.

3 A. No.

4 BY MS. THORPE:

5 Q. Who would you say has overall responsibility?

6 A. I think the team is responsible.

7 Q. Okay. And you as a client executive manage the  
8 team and make sure that each of the parts of the team  
9 are doing what they are supposed to do for the entire  
10 product that's going to be presented to the client?

11 MR. ABELSON: The question lacks foundation, is  
12 vague.

13 A. Not specifically.

14 BY MS. THORPE:

15 Q. Well, then, can you explain to me more what  
16 your role is as client executive with a team that's  
17 putting together an insurance program for a client?

18 A. As I said before, my role as a client executive  
19 is to manage the client relationship and provide the  
20 right resources that the account needs in orchestrating  
21 those resources.

22 Q. You stay very involved in what each of the team  
23 members is doing in fulfilling the responsibilities  
24 they've been given?

25 MR. ABELSON: The question is vague and lacks

**EXHIBIT “E”**

1  
2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF CALIFORNIA  
4 SAN JOSE DIVISION  
5

6 NETSCAPE COMMUNICATIONS, )  
7 et al. )

COPY

8 Plaintiffs, )

9 vs. )

No. C-06-00198

JW (PVT)

10 FEDERAL INSURANCE )  
11 COMPANY, )

12 Defendant. )  
13 ----- )

14  
15  
16 September 7, 2006

17 9:07 a.m.

18  
19 Deposition of MICHELE MIDWINTER, held  
20 at the offices of Duval & Stachenfeld, 300  
21 East 42nd Street, New York, New York, before  
22 Laurie A. Collins, a Registered Professional  
23 Reporter and Notary Public of the State of New  
24 York.  
25

1  
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15 **San Francisco, California 94111**

16 **BY: SARA M. THORPE, ESQ.**

17  
18 **ALSO PRESENT:**

19 **THOMAS KEIGHLEY, Videographer**

Midwinter

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M I C H E L E M I D W I N T E R ,

called as a witness, having been duly sworn  
by the Notary Public, was examined and  
testified as follows:

EXAMINATION BY

MR. ABELSON:

Q. Good morning, Ms. Midwinter.

A. Good morning.

Q. Would you state and spell your name for  
the court reporter, please?

A. Michele, M-I-C-E-E-L-E, Midwinter,  
M-I-D-W-I-N-T-E-R.

Q. And where are you currently employed,  
Ms. Midwinter?

A. Travellers Insurance Company.

Q. What is your title as it exists today?

A. Account executive officer.

Q. And you are here today in your capacity  
as the underwriter of a policy for America  
Online -- I'll refer to them as AOL -- for 1999  
and a subsequent policy that lasted through a  
period 2001?

A. Correct.

Q. And you are also here in your capacity

Midwinter

1  
2 as a PMK, a person most knowledgeable, on certain  
3 designated topics. You understand that?

4 A. Correct.

5 Q. Let me just specify what those topics  
6 are and make sure that we have a common  
7 understanding here.

8 First and foremost, you're here not  
9 only in your individual capacity but also as the  
10 person most knowledgeable as the underwriter for  
11 St. Paul's policy for AOL; correct?

12 A. Yes.

13 Q. You are also here as the person most  
14 knowledgeable about the scope of coverage provided  
15 by St. Paul's technology commercial general  
16 liability policy; correct?

17 A. Yes, yes.

18 Q. You're also designated as the person  
19 most knowledgeable as the meaning of St. Paul's  
20 policy on personal injury and advertising injury.  
21 I guess there was an endorsement of October 5,  
22 2000?

23 A. Yes.

24 Q. Okay. And you're also here as the PMK,  
25 person most knowledgeable, on the negotiation --

Midwinter

MR. ABELSON: Okay. Let's actually talk about this claim now. I've warmed her up now. I'm getting warm.

Q. In 1999-2000 time period, you were employed with St. Paul; correct?

A. Yes, I was.

Q. And in what capacity were you employed at that time?

A. I was an underwriter.

Q. When did you start with the company?

A. June of 1987.

Q. Were you in a particular section or division of the company?

A. I pretty much worked in the typing department at that time doing transcription for the claims department.

Q. When did you first take on underwriting responsibilities for the company?

A. I believe it was in June of '94.

Q. Had the technology unit been created at that time?

A. Yes.

Q. But you were not yet in the technology unit?

Midwinter

1  
2 A. I was in the technology unit at that  
3 time.

4 Q. Your first employ as an underwriter was  
5 with the technology unit?

6 A. Correct.

7 Q. Let me ask you this: What's the  
8 difference between an account underwriter and a  
9 senior underwriter in the St. Paul hierarchy?

10 A. They've just changed like title names  
11 over the past couple years. What distinguishes  
12 one title from another is the number of years that  
13 you've been in the industry.

14 Q. When was -- well, you went to the  
15 technology unit in 1994. How did that come about  
16 that you became an underwriter with St. Paul? Did  
17 you apply for the job? How did you get that job?

18 A. When I first moved into the New York  
19 City office in February of '91, I was an assistant  
20 underwriter. And a position became available for  
21 an underwriter around the time of June of 1994,  
22 and that's when they moved me into that position.

23 Q. As an assistant underwriter, had you  
24 been working on technology-type of accounts?

25 A. Yes.

Midwinter

on a day-to-day basis anymore?

A. No, I'm not.

Q. Is she still in your New York office or considered part of your New York office?

A. No, I don't believe -- well, I know that she's not working in our region right now.

Q. Do you know what region she's in?

A. I believe she's somebody who's used for helping out when people are overloaded with work, because she still works out of her home. She's basically just issuing policies at this point. But she'll help out anybody across the country. And I believe she's working in our vision pack department, which is a small policy department that we have.

Q. Returning again for a moment to talking about the technology unit, which I guess you said was from about 25 years ago. Do you know why that particular unit or division was formed?

A. To my knowledge, they felt that it would be better for us if we could have a department that was focused on just looking at the technology-type business that falls within our definition of what technology is, to differentiate

Midwinter

us from our competitors.

Q. You said what our definition of technology is. What is your definition of technology?

A. Telecommunications, either manufacturing or servicing; information technology; medical equipment manufacturing; and then electronics manufacturing.

Q. Are those the -- sort of the trade group designations that we talked about earlier?

A. Correct.

Q. Okay. Are there any other designations or pretty much those five or six?

A. Those are pretty much the segments that we do the work in.

Q. To the best of your understanding, which one of those designations did AOL's line of business fall into?

A. Information technology.

Q. In the 1999-2000 time period, were there any type of underwriting guidelines that you had available to you?

A. There were some guidelines.

Q. What form did they take?

Midwinter

people being able to send e-mails through AOL, you know, going into the chat rooms and saying something, you know, about somebody. I mean, those were concerns. And again, we knew that that coverage would be provided under the media policy, so we knew we wouldn't be covering that under ours.

Q. In addition to forming an understanding of AOL's business operations, did you also formulate an understanding of AOL's primary exposures?

A. Yes.

Q. And what were they?

A. We felt that it was anything that was tied to their online activity.

Q. And you were excluding all those?

A. Correct.

Q. What other exposures did they have?

A. We were looking at automobile coverage, and we were looking at auto accidents. That's typical to any policy. But with respects to AOL, I mean, we were providing bodily injury and property damage.

Other than the AI and PI associated

Midwinter

1  
2 with the online activities, I didn't really see  
3 anything else that was going to be an exposure  
4 issue for us.

5 Q. Well, this was going to be some AI/PI  
6 in the policy; correct?

7 A. Correct.

8 Q. What would that apply to, then?

9 A. Anything that didn't involve the online  
10 portion.

11 Q. Just take a look for a second back at  
12 Mr. Bannell's letter that we marked as exhibit --

13 A. Can we just take a really quick break?

14 Q. Sure.

15 (Discussion off the record.)

16 THE VIDEOGRAPHER: The time is 1:21.

17 We're off the record.

18 (Pause.)

19 THE VIDEOGRAPHER: The time is 1:21.

20 We're back on.

21 Q. In Mr. Bannell's submission, the cover  
22 letter, Exhibit Number 75, he says, at SPM 2644,  
23 if you would take a look with me. He says that --  
24 or references that there's a pending transaction  
25 with respect to Netscape Corporation and that

1 Midwinter

2 her understanding was of Netscape's operations?

3 A. That they were very similar to America  
4 Online.

5 Q. As an ISP, you mean?

6 A. Correct.

7 Q. I take it you did no independent  
8 research to look into the nature or extent of  
9 Netscape's operations; is that correct?

10 A. No, I did not.

11 Q. I take it you did no independent  
12 research into the nature or extent of Netscape's  
13 exposures; correct?

14 A. No, I did not.

15 Q. At any point prior to binding this  
16 coverage, did you -- other than what you told us  
17 about your considering them to have similar  
18 operations to AOL, did you formulate any other  
19 understanding of Netscape's business?

20 A. Not that I'm aware of, no.

21 Q. Same answer with regard to Netscape's  
22 exposures?

23 A. Correct.

24 Q. Let's skip ahead, if we can, to the  
25 quote that was ultimately given. Let me show you

Midwinter

what we will mark as Exhibit Number 79. Exhibit Number 79 is a document on St. Paul letterhead, or the first page is, to George Bannell from Michele Midwinter dated February 23rd, 1991, and it's production numbers SPM 2298 to 2322. Take a moment to review that document.

(Exhibit 79, document dated 2/23/99 from Midwinter to Bannell, Bates stamped SPM 2298 to 2322, marked for identification, as of this date.)

A. I'm sorry, just quickly, it was February 23rd of '99. I think you said '91.

Q. I'm sorry. Wow.

And you recall this document as being the proposal or the quote that you gave to Mr. Bannell in response to the submission that he made?

A. Yes.

Q. So we have sort of our hierarchy here and understand our terms, the broker comes in and makes a submission to you?

A. Yes.

Q. You come back and make is it a quote or proposal?

Midwinter

looking at 2305, that you gave -- I guess you  
quoted this account three different ways?

A. Correct.

Q. Can you explain, I guess, the three  
quotes?

A. There was one quote that we did with  
\$100,000 deductible for 650,000, there was a  
second quote with a half-million-dollar deductible  
for 375, and then there was a \$100,000 deductible  
excluding the AI and PI.

Q. Was that a full exclusion or was this  
more -- the more limited just online activities?

A. I believe it was representing just  
excluding the online activities, but it wasn't  
worded that way.

Q. That's why I ask these questions is to  
try and clarify these things.

Let me ask you to take a look at 2312  
now in this quote. Just to lay the framework  
here, the submission is typed up by Marsh; is that  
correct?

A. Correct.

Q. The pages that we're looking at here,  
the ones that are -- have titles at the top "1991

Midwinter

information purposes.

Q. And coverage was to be bound here irrespective of what this information showed; correct?

A. Correct, because the policy form provides that provision.

Q. Did you do any review of what she sent here, or did you just execute the binder and get on with it?

A. I believe we just executed the binder and making sure that the vehicles were endorsed to the policy to make sure they had coverage for those.

Q. I'm going to show you what we'll mark as Exhibit Number 85, which is a fax from St. Paul to Nancy Hessen from Michele Midwinter dated April 27th, 1999.

(Exhibit 85, fax dated 4/27/99 from Midwinter to Hessen, marked for identification, as of this date.)

Q. And that's just your confirmation that Netscape was added to the policy; correct?

A. Correct.

Q. Now, there was an additional premium

Midwinter

here of about 12,000 bucks?

A. Correct.

Q. That was just based on -- I see some worksheets here. This was driven by what, exactly, the increase in premium?

A. We added the vehicles that Netscape had onto the AOL policy, and then we also added the revenue base associated with Netscape onto the policy, instead of waiting for that revenue base to pick up at audit time.

Q. So you prorated it; is that it?

A. Correct, the endorsement was added effective 4/30, so it would have been a prorated premium from 4/30/99 to 4/1 of 2000.

Q. Let me show you what I'll mark as -- you can set that aside. Exhibit 86 is a two-page endorsement, SPM 2474 to 2475.

(Exhibit 86, endorsement, Bates stamped SPM 2474 to 2475, marked for identification, as of this date.)

Q. Do you recognize this as the endorsement that was issued in connection with your binding coverage for Netscape?

A. Correct.

Midwinter

1  
2 Q. It says on the document that rating  
3 information used to calculate the premium for your  
4 commercial general liability protection has  
5 changed. And then it gives a class code that  
6 appears to be the same class code that we looked  
7 at in the AOL rating sheet that was used by  
8 Christine to issue the policy.

9 A. Correct.

10 Q. Okay. What's changed, then?

11 A. The only change that we did was add the  
12 class code on with the revenue base. I'm not sure  
13 what that previous statement actually means.

14 Q. As far as you know, there was no change  
15 in class because of -- of class code because of  
16 the addition of Netscape as an insured to AOL's  
17 policy?

18 A. No, we used the same class code and  
19 just added their revenue base on, using the same  
20 class code.

21 Q. That would have been appropriate  
22 because your view was they were in the same line  
23 of business?

24 A. Correct.

25 Q. All right. Set that one aside.

Midwinter

1  
2 MR. ABELSON: I've offered to continue  
3 this deposition.

4 MS. THORPE: I think we should go  
5 ahead. I've asked the witness, and she said  
6 she's fine. Let's go ahead.

7 MR. ABELSON: By the way, I disagree  
8 with you the language was accepted. But that  
9 will be something we'll work out. Let me  
10 continue, however. We can argue about that  
11 later.

12 THE VIDEOGRAPHER: Counsel, I need 30  
13 seconds for a tape change.

14 MS. THORPE: Sure.

15 MR. ABELSON: Sure.

16 THE VIDEOGRAPHER: The time is 5:33.  
17 We're off the record a moment.

18 (Recess taken from 5:33 to 5:38.)

19 THE VIDEOGRAPHER: The time is 5:38.  
20 We're back on the record.

21 Q. I've put Exhibit Number 69 back in  
22 front of deponent and ask Ms. Midwinter, the  
23 additional wording that Marsh requested, is that  
24 reflected at the bottom of Exhibit Number 69 on  
25 the second page, SP 1935.

Midwinter

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A. Yes, it is.

Q. And with respect to that, Mr. O'Connor writes, in paragraph 4 of Exhibit Number 69, he says, As we -- this is an e-mail to you, by the way. As we previously discussed, the current PI/AI endorsement will cause problems if there is an advertising claim that involves both print advertising and advertising online.

That is a topic that you had previously discussed with Mr. O'Connor?

A. I believe that was discussed in the conference call we had in the group.

Q. Back on the 30th?

A. Correct.

Q. He goes on to say, In addition, we agree that there will be claims that call into question the definition of online activities.

Are you with me there?

A. Yes, I am.

Q. Do you recall that being discussed on the conference call of June 30th?

A. I don't recall if we spoke about the definition of online activities at that time.

Q. Do you recall him discussing with you

Midwinter

1  
2 that there might be instances that might be online  
3 and not online and that it might call into  
4 question what the definition of online activities  
5 would be?

6 A. I think the first communication was in  
7 his number 4 bullet in this document.

8 Q. Okay. So you recall the first point  
9 being discussed in the conference call but not the  
10 last line being discussed in the conference call;  
11 is that correct?

12 A. Correct. I don't believe we spoke  
13 about definitions during the conference call.

14 Q. Okay. Okay. But the concept that  
15 there might be conduct that is both online and  
16 offline being intermixed posing a problem, was  
17 that discussed?

18 A. I believe it was, yes.

19 Q. And so Marsh then proposes a definition  
20 of online activities that appears on the second  
21 page of this; correct?

22 A. Correct.

23 Q. Do you recall any prior conversation  
24 with Mr. O'Connor prior to receiving this  
25 particular wording that appears on 1935?

Midwinter

1

2

A. No, not that I recall.

3

4

Q. And when you received it, what did you do with it?

5

6

A. Janice Corbetis, who was -- let me start over.

7

8

9

10

Angela Adams, who was involved with this, had left the company in August of 2000. So when this came in, I had presented the e-mail to Janice Corbetis and had asked her her opinion.

11

12

13

14

Q. What did Ms. Corbetis say or do?

A. She had indicated that since this was the actual intent since the beginning that it was okay to endorse the policy.

15

16

17

Q. Ms. Corbetis, from your prior testimony, had not been in on any of the prior discussions; correct?

18

19

20

A. Correct.

21

22

23

Q. So what was her basis for saying this was the intent since the beginning of the policy?

A. I basically told her the conversations that Angie and I had had with Marsh and then AOL during the June 30th conference call -- June 30th?

24

25

Q. Correct.

A. -- and told her that this was what we

Midwinter

1  
2 had agreed upon at that point and that this was  
3 our intent of what we were covering. So it was  
4 information that I provided to her.

5 Q. So when she says this was the intent,  
6 she means that this captures the intent that you  
7 had formed?

8 A. That Angela Adams and I had formed  
9 together, correct.

10 Q. Okay. But this does not express any  
11 intent that Ms. Corbetis had and formed  
12 independent of your intent?

13 A. No.

14 Q. She was relying on whatever agreements  
15 and conversations you had had?

16 A. Yes.

17 Q. You say you forwarded the e-mail. You  
18 mean Mr. O'Connor's e-mail to Ms. Corbetis?

19 A. No, I didn't forward it to her. She  
20 was in our office on the day that I had asked her  
21 to take a look at this.

22 Q. How lucky for Ms. Corbetis.

23 A. Exactly.

24 Q. Did you print it out? Did you read it  
25 online?

**EXHIBIT “F”**

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

4 -----  
5 Netscape Communications  
6 Corporation, a Delaware  
7 corporation; and  
8 America Online, Inc.,  
9 a Delaware corporation,

10 Plaintiffs,

11 vs.

12 No. C-06-00198 JW (PVT)

13 Federal Insurance Company,  
14 an Indiana corporation;  
15 St. Paul Mercury Insurance  
16 Company, a Minnesota  
17 corporation; Executive Risk  
18 Specialty Insurance Company,  
19 a Connecticut corporation;  
20 and DOES 1 through 50,

21 Defendants.  
22 -----

23 CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

24 \* \* \*

25 VIDEO DEPOSITION OF  
DAN WEISS

\* \* \*

(VOLUME I)

26  
27  
28 Taken before LISA M. PETERSON, on the 5th day of  
29 October 2006 in St. Paul, Minnesota, commencing  
30 at approximately 9:00 a.m.

APPEARANCES

MS. LESLIE A. PEREIRA, Attorney at Law,  
Abelson & Herron, LLP, Suite 650, 333 South Grand  
Avenue, Los Angeles, California, 90071, appeared  
on behalf of named Plaintiffs.

MS. SARA M. THORPE, Attorney at Law,  
Gordon & Rees, LLP, Suite 2000, 275 Battery  
Street, San Francisco, California, 94111,  
appeared on behalf of named Defendant St. Paul  
Mercury Insurance Company.

ALSO PRESENT: Mr. Joe Mildenberger, Videographer.

\* \* \*

I N D E X

DEPOSITION EXHIBITS

| Exhibit       | Page |
|---------------|------|
| No. 134 ..... | 142  |
| No. 135 ..... | 145  |
| No. 136 ..... | 149  |

NOTE: Deposition Exhibit Nos. 134 through 136  
were retained by Attorney Leslie A. Pereira and  
are not appended to the transcript.

1 until you became senior counsel in the legal  
2 services department?

3 A Yes.

4 Q That I believe was August?

5 A 2002.

6 Q When you became a technology claim attorney in  
7 April of '01, was that your first job with  
8 St. Paul?

9 A Yes.

10 Q What were your responsibilities as technology  
11 claim attorney?

12 A To administer claims, to analyze coverage and  
13 administer claims involving technology accounts  
14 and in general intellectual property and  
15 personal injury and advertising injury claims.

16 Q Can you give me just a general sense of -- and  
17 if it helps just assume a new claim came in --  
18 how you handled that claim if a new claim was  
19 tendered and it was assigned to you? What were  
20 your responsibilities with respect to handling  
21 that claim?

22 A My responsibilities were generally to review the  
23 materials submitted by the policyholder in  
24 support of its claim for coverage, review the  
25 policy, review any other materials as necessary

1 to make my coverage determination, then  
2 depending on the determination of coverage  
3 either issue a reservation of rights letter and  
4 agree to defend or deny coverage, correspond  
5 with the policyholder explaining our position  
6 and if it involves a provision of a defense, set  
7 up that defense, monitor the defense and  
8 hopefully get the claim resolved.

9 BY MS. PEREIRA:

10 Q When you started as a technology claim attorney  
11 in April 2001, were you handed a set of claims  
12 when you walked in the door?

13 A Yes.

14 Q Can you tell me were many of those claims  
15 ongoing claims?

16 A Several of them were ongoing claims, yes. I  
17 don't know what you mean by many. The group I  
18 was handed included ongoing claims.

19 Q Were you given any claims that were being  
20 brought by AOL at that time?

21 A Yes.

22 Q What AOL claims were you given at that time?

23 A I don't remember specifically. There were many  
24 of them that had already been submitted to us  
25 that Dale Evensen was handling, and he

1 essentially turned over all those claims  
2 involving AOL to me.

3 Q Was one of those claims the SmartDownload  
4 claim?

5 A Yes.

6 Q Why did you receive Dale Evensen's claims?

7 A Dale Evensen's AOL claims?

8 Q Yes. Are those the only claims you received  
9 from Dale Evensen?

10 A I don't remember. There may have been others.  
11 It was just an opportunity for me to get started  
12 on some claims. It was help relieving some of  
13 his workload and giving me something to start  
14 on.

15 Q So the SmartDownload claim was one that you  
16 received from Mr. Evensen?

17 A Yes.

18 Q Did you meet with Mr. Evensen at the time that  
19 you assumed the AOL claims from him?

20 A I'm sure I did.

21 Q Do you have any recollection of that meeting?

22 A No.

23 Q Do you recall how many roughly AOL claims there  
24 were that you received from Mr. Evensen?

25 A A dozen more or less.

1 these files were actually transferred to me.

2 Q In this case do you recall there was actually a  
3 challenge by the insured or the insured's  
4 counsel to the denial letter?

5 A Yes.

6 Q Then at the point you received this letter  
7 challenging the denial, then would you have  
8 conducted your own independent coverage  
9 determination?

10 A Yes.

11 MS. THORPE: Objection. Are you  
12 asking did he or -- Speculation.

13 BY MS. PEREIRA:

14 Q Did you?

15 A Yes. When I received this file, I believe there  
16 had already been a challenge letter submitted by  
17 counsel for AOL that Dale had not responded to  
18 and so in transferring the file to me it was my  
19 responsibility to respond to that letter, and in  
20 connection with doing that I did conduct my own  
21 independent coverage analysis.

22 Q Looking back at Exhibit 129 which I have put in  
23 front of you, that's a cover letter from Dennis  
24 Love to Dale Evensen tendering the Specht and  
25 Mueller lawsuits. Do you agree with that?

1 A Okay.

2 Q Do you recall this being a document that was in  
3 the claim file?

4 A Yes.

5 Q Is this a document you reviewed in connection  
6 with your coverage determination?

7 A Yes.

8 Q Let me show you what we have previously marked  
9 as Exhibit 130.

10 A Okay.

11 Q Is that a document that you have seen in the  
12 claim file?

13 A Yes.

14 Q That is a cover letter from Dennis Love to Dale  
15 Evensen enclosing copies of the Weindorf and  
16 Gruber complaints, is that right?

17 A That's correct.

18 Q Did you consider those complaints in connection  
19 with your coverage determination of the  
20 SmartDownload matter?

21 A Yes.

22 Q I'm going to show you what has previously been  
23 marked as Exhibit 131, if you could take a look  
24 at that.

25 A Okay.

1 Q This is a December 13, 2000 letter that  
2 Mr. Evensen wrote to Mr. Curran at America  
3 Online denying coverage for the SmartDownload  
4 claim, is that right?

5 A Yes.

6 Q If I just generally refer to this as a denial  
7 letter, do you think that's accurate?

8 A Sure.

9 Q Did you in connection with your review of the  
10 file, the SmartDownload claim file, did you  
11 review this letter?

12 A Yes.

13 Q Did you agree with this letter?

14 A Yes.

15 Q On page 4 of the letter Mr. Evensen states, "The  
16 claimant does not seek damages for personal  
17 injury or advertising injury as defined by the  
18 St. Paul CGL policy."

19 Do you see that?

20 A Yes.

21 Q Did you agree with that conclusion?

22 A Yes.

23 Q Can you tell me why?

24 A Because --

25 MS. THORPE: Excuse me. For

1 Q When you inherited the file, did you make any  
2 effort to learn more about the development of  
3 the factual allegations by the plaintiff?

4 A Yes, I did.

5 Q What did you do?

6 A At some point I talked to David Goldberg at AOL  
7 and asked him about the status of the underlying  
8 matter. He told me it had been on hold  
9 essentially since early 2002, I believe, because  
10 of a denial of a motion to compel and pointed me  
11 to a federal district court decision which I  
12 obtained and reviewed and looked at the  
13 discussion of the facts in that opinion to see  
14 whether or not there had been anything else out  
15 there that may have changed my opinion or my  
16 understanding of the facts.

17 Q Did you inquire about any discovery that was  
18 being taken by the plaintiffs in the underlying  
19 SmartDownload cases?

20 A Not specifically, no.

21 Q Do you know whether the plaintiffs took any  
22 discovery of third parties who they believed  
23 Netscape and/or AOL had disclosed their private  
24 information to?

25 A I don't know if there had been any discovery

1 conducted in the underlying matter. All I know  
2 is what was presented to me and what I learned  
3 from reading the underlying federal district  
4 court decision.

5 Q Did the materials that you reviewed in  
6 connection with the SmartDownload claim raise  
7 any issues in your mind about whether the  
8 plaintiffs had any view or theory about whether  
9 Netscape and AOL had shared their private  
10 information with any third parties?

11 A I'm sorry, can you repeat that back for me.

12

13 (The requested testimony was read back.)

14

15 A No.

16 BY MS. PEREIRA:

17 Q Do you generally keep yourself apprised of  
18 litigations involving your insureds when you are  
19 responsible for the claim file?

20 MS. THORPE: Objection. Incomplete.

21 BY MS. PEREIRA:

22 Q When an insured has made a claim, a liability  
23 claim based on a lawsuit against them and that  
24 claim file is assigned to you, do you keep  
25 abreast of the litigation against the insured?

1 requesting another certified copy. Maybe I  
2 should call it official copy. Certification is  
3 a whole separate issue. I don't want to give  
4 the impression that's how we obtain certified  
5 policies.

6  
7 (A break was had from 4:29 to 4:36.)

8 (Exhibit 136 was marked for identification.)  
9

10 BY MS. PEREIRA:

11 Q We marked as Exhibit 136 a letter dated August  
12 30, 2002 from Dan Weiss to Mr. Thomas Connell.  
13 Can you take a moment and look at that document.

14 A Okay.

15 Q Is that your signature on page 5?

16 A Yes, it is.

17 Q Is this a letter you sent to Thomas Connell in  
18 or around August 30, 2002?

19 A Yes.

20 Q Not too long ago we were talking about a letter  
21 that Mr. Connell wrote to Mr. Evensen at  
22 St. Paul dated March 16, 2001. Do you remember  
23 that?

24 A Yes.

25 Q And we were talking about that as a challenge to

1 A No.

2 Q What did you do when you realized no letter had  
3 been sent in response to Mr. Connell's March  
4 2001 letter?

5 A First thing I did was contacted David Goldberg  
6 to get an update on the status because I wanted  
7 to be sure something hadn't transpired I should  
8 be aware of, and that's when he told me there  
9 had been basically no progress in the case for  
10 several months because of the -- I think it was  
11 a denial of a motion to compel arbitration.

12 Then it made sense to me because again if  
13 the underlying matter had proceeded  
14 significantly on the merits, I'm sure AOL would  
15 have come knocking on my door asking us to  
16 reconsider and to respond quickly to  
17 Mr. Connell's letter.

18 Q Do you know whether any discovery was taken  
19 during this time period March 2001 to August  
20 2002 in the underlying cases?

21 A I do not.

22 Q Did you ask Mr. Goldberg about that?

23 A I'm sure I asked him about status. I don't know  
24 if I specifically asked for discovery or not.

25 Q Now, why is it that you called Mr. Goldberg

1           instead of Mr. Connell who had previously  
2           corresponded with St. Paul on AOL's behalf?

3     A     That's a good question. My recollection is that  
4           Mr. Goldberg and I had been in contact about  
5           other matters. So I felt comfortable in  
6           contacting him essentially client to client, but  
7           I don't recall specifically why. I guess it was  
8           just a prior relationship with Mr. Goldberg.

9     Q     Was there anything else that you did when you  
10           realized the letter -- that no letter had been  
11           sent in response to Mr. Connell's March 2001  
12           letter?

13    A     As I mentioned earlier, I went online to try to  
14           pull a copy of the decision that had been  
15           rendered in that case to see whether there was  
16           any further exploration or explanation of the  
17           allegations in the underlying complaints. I  
18           didn't want to send out a response to the  
19           challenge letter and make reference to something  
20           that was just incorrect.

21    Q     I see. Is that a document you looked at with  
22           Ms. Thorpe when you were preparing for this  
23           deposition?

24    A     Yes.

25    Q     Was that a copy of the district court's decision

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

4 -----  
5 Netscape Communications  
6 Corporation, a Delaware  
7 corporation; and  
8 America Online, Inc.,  
9 a Delaware corporation,

10 Plaintiffs,

11 vs.

12 No. C-06-00198 JW (PVT)

13 Federal Insurance Company,  
14 an Indiana corporation;  
15 St. Paul Mercury Insurance  
16 Company, a Minnesota  
17 corporation; Executive Risk  
18 Specialty Insurance Company,  
19 a Connecticut corporation;  
20 and DOES 1 through 50,

21 Defendants.  
22 -----

23 CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

24 \* \* \*

25 VIDEO DEPOSITION OF  
DANIEL WEISS

\* \* \*

(VOLUME II)

26 Taken before LISA M. PETERSON on the 7th day of  
27 November 2006 in St. Paul, Minnesota, commencing at  
28 approximately 9:08 a.m.

APPEARANCES

MS. LESLIE A. PEREIRA, Attorney at Law,  
Abelson & Herron, LLP, Suite 650, 333 South Grand  
Avenue, Los Angeles, California, 90071, appeared on  
behalf of named Plaintiffs.

MS. SARA M. THORPE, Attorney at Law,  
Gordon & Rees, LLP, Suite 2000, 275 Battery Street,  
San Francisco, California, 94111, appeared on behalf  
of named Defendant St. Paul Mercury Insurance  
Company.

ALSO PRESENT: Mr. John Mulcahy, Videographer.

\* \* \*

## I N D E X

## DEPOSITION EXHIBITS

| Exhibit           | Page |
|-------------------|------|
| No. 189-193 ..... | 196  |
| No. 194 .....     | 218  |
| No. 195-199 ..... | 230  |
| No. 200 .....     | 253  |
| No. 201-203 ..... | 263  |

NOTE: Deposition Exhibit Nos. 189 through 203  
were retained by Attorney Leslie A. Pereira and  
are not appended to the transcript.

1 Q Anything else?

2 A No.

3 MS. PEREIRA: Let's go off the record  
4 for a moment.

5

6 (A recess was had from 9:50 to 10:00)

7 (Exhibits 189-193 marked for identification)

8

9 BY MS. PEREIRA:

10 Q Mr. Weiss, let me show you what we have marked  
11 as Exhibit 190, if you could take a look at  
12 that please.

13 A Okay.

14 Q Can you tell me what this document is?

15 A It's a letter dated February 21, 2002 to me  
16 from Elizabeth Clower.

17 Q Is your understanding that by this letter AOL  
18 was tendering a claim to you related to an  
19 investigation that the Attorney General of New  
20 York was undertaking?

21 A Yes.

22 Q And that document is attached to this cover  
23 letter?

24 A I'm not sure what you mean by that document.  
25 There is a document attached to this cover

1 letter that explains the nature of their  
2 claim.

3 Q Attached to this is a four-page letter from the  
4 New York Attorney General to AOL, is that  
5 right?

6 A Yes.

7 Q Do you recall receiving this document tendered  
8 to you from AOL's representatives?

9 A Yes.

10 Q What was your understanding of what was being  
11 tendered?

12 A According to the cover letter from Marsh, AOL  
13 was seeking defense and indemnification for the  
14 investigation by the Attorney General's Office  
15 into SmartDownload.

16 Q When you received this letter from Ms. Clower,  
17 did you review the attached four-page September  
18 8, 2004 letter?

19 A Yes.

20 Q What was your understanding about what the New  
21 York Attorney General was investigating?

22 A The letter isn't very specific about the reason  
23 for the investigation but it appears as though  
24 the Attorney General is concerned about  
25 SmartDownload and the use of SmartDownload to

1 third parties.

2 BY MS. PEREIRA:

3 Q If I can direct you to page 3 of the letter,  
4 SPM 0100, and if you can look at the little  
5 subparagraph that's marked H, basically that's  
6 a list of information that's being requested by  
7 the New York Attorney General, and it asks for  
8 history of transfers to third parties.

9 Do you see that?

10 A I do.

11 Q After reviewing this document did you follow up  
12 with AOL to find out what information they had  
13 in this regard?

14 A What information they had in regard to history  
15 of transfers to third parties?

16 Q Yes.

17 A No.

18 Q When you saw this letter and specifically that  
19 bullet point, did that raise in your mind any  
20 issue about whether this could relate to  
21 coverage for the Specht lawsuit?

22 A No.

23 Q I'm going to show you what we marked as Exhibit  
24 191. Take a look at that.

25 A Okay.

1 Q At the top on this page which is SPM 1336, at  
2 the top left corner there's some handwritten  
3 notes.

4 Do you see that?

5 A Yes.

6 Q Do you know whose notes those are?

7 A I think that's Jerry Gallivan's handwriting.

8 Q Do the initials there they look like JP?

9 A Yes.

10 Q Were those his initials?

11 A Yes. JP Gallivan. Notice the date stamp at  
12 the bottom of the page.

13 Q I see. Thank you. I have not heard or seen  
14 that name before. Can you tell me who  
15 Mr. Gallivan is?

16 A He is a claim attorney with technology claim.

17 Q Is he still a claim attorney with technology  
18 claim?

19 A He is.

20 Q Do you recall whether Mr. Gallivan had  
21 responsibility for this SmartDownload-related  
22 claim?

23 A He did not.

24 Q Do you know why his stamp is on a letter that's  
25 addressed to you?

1 A I was out of the office at the time. I was on  
2 vacation on my honeymoon.

3 Q Was it your practice at the time to have  
4 someone cover for you and collect incoming  
5 correspondence?

6 A Yes.

7 Q Now, this cover letter dated April 16, 2002 is  
8 a cover letter from Ms. Clower to you attaching  
9 a subpoena that AOL received from the New York  
10 Attorney General.

11 Is that correct?

12 A That's what it appears to be.

13 Q If you can look at the second page of the  
14 subpoena or actually it's the first page of the  
15 subpoena which is SPM 1338 and that subpoena  
16 requests that AOL designate a person to be  
17 examined on five specific topics.

18 Do you see that?

19 A I do.

20 Q Then the fifth topic states, "The process by  
21 which Netscape through its browser software,  
22 web page code, server site functions and/or  
23 other mechanisms acquires, filters, logs,  
24 analyzes, uses and/or purges data."

25 Do you see that?

1 A I do.

2 Q And did you upon receiving the subpoena, did  
3 you follow up with AOL about what uses Netscape  
4 was making with regard to this information?

5 A No.

6 Q I'm going to show you what we marked as Exhibit  
7 192. Is this a document that you reviewed with  
8 Ms. Thorpe yesterday?

9 A Yes.

10 Q Have you had an opportunity to read it over  
11 recently?

12 A Yes.

13 Q This is a May 23, 2002 letter that you wrote to  
14 America Online?

15 A Yes.

16 Q That's your signature on the fifth page of the  
17 letter?

18 A Yes.

19 Q In this letter is it fair to characterize it as  
20 a denial letter for the New York Attorney  
21 General investigation?

22 A Yes.

23 Q If I can direct your attention to page 4, it's  
24 a letter which is SPM 1334, and under  
25 subsection 3 which you have titled "Basis For