

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NETSCAPE COMMUNICATIONS
CORPORATION, a Delaware
Corporation; and America
ONLINE, INC., a Delaware
Corporation,

Plaintiffs,

Vs. Case No. 5:06-CV-00198-JW (PVT)

FEDERAL INSURANCE COMPANY
An Indiana corporation,
Et al.,

Defendants.

ST. PAUL MERCURY INSURANCE
COMPANY, a Minnesota
Corporation,

Counter-Claimant,

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

Counter-Defendants.

DEPOSITION OF GLENN A SPENCER

AUGUST 15, 2006

227192



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1 IN THE UNITED STATES DISTRICT COURT
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3 SAN JOSE DIVISION

4 NETSCAPE COMMUNICATIONS
5 CORPORATION, a Delaware
6 corporation; and AMERICA
7 ONLINE, INC., a Delaware
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13 et al.,

14 Defendants.

15 _____
16 ST. PAUL MERCURY INSURANCE
17 COMPANY, a Minnesota
18 corporation,

19 Counter-Claimant,

20 vs.

21 NETSCAPE COMMUNICATIONS
22 CORPORATION, a Delaware
23 corporation; and AMERICA
24 ONLINE, INC., a Delaware
25 corporation,

 Counter-Defendants.

 DEPOSITION OF GLENN A. SPENCER, a witness,
 taken on behalf of the Defendant and
 Counter-Claimant, pursuant to Subpoena, on the 15th
 day of August, 2006, at the law offices of
 Constangy, Brooks & Smith, 2600 Grand Boulevard,
 Suite 300, Kansas City, Missouri, before

 KATHRYN A. LANNING,

1 of AAA Court Reporting Company, a Registered
2 Professional Reporter, Certified in Missouri and
3 Kansas.

4 APPEARANCES

5 For the Plaintiffs:

6 MR. MICHAEL BRUCE ABELSON
7 ABELSON HERRON, LLP
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9 Los Angeles, California 90071

10 For the Defendant and Counter-Claimant:

11 MS. SARA M. THORPE
12 GORDON & REES, LLP
13 Embarcadero Center West
14 275 Battery Street, Suite 2000
15 San Francisco, California 94111

16 STIPULATIONS

17 It was stipulated by and between
18 counsel and the witness that the presentment of
19 this deposition to the witness by the officer
20 is expressly waived.

21 It was further stipulated by and
22 between counsel that if said deposition is not
23 signed by the witness by the time of the
24 commencement of the trial, it may be used as
25 though signed.

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Reporter's Note: Original exhibits were retained
by Ms. Thorpe.

1 (The deposition commenced at 9:00
2 a.m.)

3 GLENN A. SPENCER,
4 a witness, being first duly sworn, testified
5 under oath as follows:

6 EXAMINATION BY MS. THORPE:

7 Q. Can you state your name for the record.

8 A. Glenn Spencer.

9 Q. Would you spell your name for the court
10 reporter?

11 A. G-l-e-n-n, middle initial A, S-p-e-n-c-e-r.

12 Q. Mr. Spencer, my name is Sara Thorpe and I
13 represent St. Paul. And we're here on a
14 lawsuit that AOL brought against St. Paul
15 arising out of what are referred to in the
16 lawsuit the SmartDownload claims.

17 Are you generally familiar with the
18 fact that there's a lawsuit pending?

19 A. Yes.

20 Q. You've had your deposition taken before in May
21 of 2002 in another lawsuit that AOL filed
22 against St. Paul relating to the 5.0
23 litigation. Do you recall having your
24 deposition taken before?

25 A. I do.

1 changes, can we have an agreement we'll just
2 refer to the company as Marsh?

3 A. That's fine with me.

4 Q. What were your position or positions from 1992
5 to 2000 at Marsh?

6 A. I started in sales and then I ran the sales
7 department and then I managed their middle
8 market division in Washington, DC. That was
9 basically it through 2000.

10 Q. What -- during what years were you the middle
11 market -- running the middle market division in
12 Washington, DC?

13 A. 1997 to 2000.

14 Q. What were your responsibilities in that role?

15 A. I oversaw -- we had sales, client executives,
16 account executives or brokers, you know, we
17 call them brokers, claims, loss control people.
18 It was basically half of the office was -- half
19 of our revenue came from middle market clients,
20 half came from Fortune 500 clients and I ran
21 the division that handled all the middle market
22 business in the office, so I oversaw all the
23 people in operations.

24 Q. And from two -- about February, 2000, to
25 February, 2001, you were with AOL; is that

1 right?

2 A. I was.

3 Q. And your position there was what?

4 A. Vice president of risk strategies, I think they
5 called it.

6 Q. What did your position entail at AOL?

7 A. I was responsible for the risk management
8 function in the organization, which was
9 identifying the risks that the company faced
10 and quantifying them, developing strategies on
11 avoiding, mitigating the exposures to loss and
12 risk financing.

13 Q. Who had that position before you took that
14 position?

15 A. It was a newly created position when I took it.

16 Q. Were there others in the risk management
17 department when you took over as vice
18 president?

19 A. Not when I took over, no.

20 Q. Did -- later were people added?

21 A. Yes.

22 Q. When, who was added?

23 A. Nancy Perkins was added and I had an assistant,
24 Lisa Creel, and Scott Morrow.

25 Q. And then in February, 2001, or about then, you

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MR. ABELSON: Question lacks

foundation, is overbroad.

A. None that I recall. I mean, I was referring here to what AOL did.

Q. (By Ms. Thorpe) Was it your understanding after reviewing the Executive Risk policy that to the extent the coverage was excluded from the St. Paul policy, it was being covered by the Executive Risk policy?

A. To the extent it was excluded by St. Paul -- no, that was never the intention of anybody.

Q. Was it your intention that -- where would there -- in the insurance program was there coverage for PI and AI arising out of AOL and its subsidiaries' online business?

MR. ABELSON: Question lacks

foundation and it's vague and overbroad.

A. The question is where was PI/AI for our online business at this time?

Q. (By Ms. Thorpe) Right, in the April, '99, to April, 2000, policy period.

A. And the time reference is when did I become aware of where the coverage was, is that the --

Q. No, the question is --

A. Where was it?

1 Q. -- where was the coverage?

2 A. It was in the E&O policy, it was in the D&O
3 policy, it was in the crime and fiduciary
4 policies, it was in the general liability
5 policy, and it was in the media policy. There
6 were aspects of it in all those policies.
7 There may be more, I don't know, I'd have to
8 really review them again.

9 Q. And was it your understanding, though, in
10 reviewing the insurance program in place from
11 April, '99, to June -- April, '99, to April,
12 2000, that to the extent online -- PI/AI
13 arising out of online business was excluded in
14 the St. Paul policy, it was picked up by those
15 other insurance policies you just referenced?

16 MR. ABELSON: Question lacks
17 foundation.

18 A. Again, no, I mean, there was no agreement from
19 anybody that say, hey, if St. Paul excludes it,
20 we cover it. So when you're asking the
21 question in that context, no, it was not my
22 understanding. There were gaps and there were
23 duplications and it was kind of a mess.

24 Q. (By Ms. Thorpe) Was -- that was your
25 assessment after looking at the policies?

1 A. Yeah.

2 Q. Was that your -- was that the intention in
3 entering into the insurance program in April,
4 '99, that there would be gaps?

5 MR. ABELSON: Objection. The question
6 lacks foundation.

7 A. No, I mean, our job was to make sure there
8 weren't gaps.

9 Q. (By Ms. Thorpe) But your assessment after
10 reviewing it was that there were gaps?

11 A. As there are in all insurance programs.

12 Q. Then you go down two paragraphs and again you
13 say, "It is clear to me that the intent all
14 along was to exclude PI/AI that resulted from
15 AOL's operations as an online company."

16 A. Yes.

17 Q. Is AOL's operations as an online company any
18 different than your earlier reference to our
19 online business?

20 MR. ABELSON: Question lacks
21 foundation, it's overbroad, it's vague.

22 A. No, but I like the way I phrased this here. I
23 mean, that is what my definition -- my
24 definition, which you keep asking me about, my
25 definition of online is AOL's operations as an

1 insurance underwriters, didn't feel as if they
2 understood the exposures well enough, and on
3 top of that, didn't feel as if there were
4 enough controls in place to manage that risk
5 within these Internet-based companies, they
6 didn't feel like they had -- because of the
7 dynamic nature of the medium, that the controls
8 weren't in place to assure that you're having
9 proper review from outside counsel on ads that
10 were placed, as an example. And so they were
11 leery of the risk.

12 And at the same time, AOL had some
13 activity in that we had been sued a few times
14 over those coverage parts in our other policy.

15 So those two factors led to us having
16 a little -- having challenges and securing that
17 coverage, led to concern around personal
18 advertising injury.

19 Q. And you were talking about AOL having claims
20 involving that coverage. You're talking about
21 claims under the '98, '99 insurance program?

22 A. Prior policies.

23 Q. There was a team put together for that 1999
24 renewal; correct?

25 A. Yes.

1 Q. Do you recall what role you had with that team?

2 A. Well, 90 percent of that team reported to me in
3 some way or another and I was -- I think if you
4 probably found a chart somewhere, I was
5 probably shown as sort of senior adviser or
6 something on the account, so I had a role on
7 the account team and they also reported to me
8 at Marsh in some way or another.

9 Q. Were you involved in the presentation put on
10 for AOL about -- with the recommendations for
11 the insurance program for 1999?

12 A. I'm sure I was.

13 Q. Were you involved in the communications with
14 AOL regarding what their needs were and what
15 Marsh's recommendations were?

16 A. Yes.

17 Q. Alex Evans was the person who coordinated the
18 team; is that correct?

19 A. Yes.

20 Q. And Lisa Conway was the one in charge of the
21 media coverage; is that correct?

22 A. Yes.

23 Q. Nancy Perkins was the one in charge of the
24 general liability coverage; is that right?

25 A. Yes.

1 MR. ABELSON: Sara, this is a reply
2 from Mike O'Connor, sort it out -- I mean, it
3 sounds like there should be.

4 MS. THORPE: I have some more to give
5 him.

6 MR. ABELSON: Do you want to have the
7 whole context in front of him?

8 Q. (By Ms. Thorpe) First of all, tell me if you
9 remember this and then I'll give you some more
10 documents.

11 A. I mean, I don't need to read the whole thing to
12 tell you if I recall this issue.

13 Q. Okay.

14 A. But, I mean, if you're going to ask me specific
15 questions about what something means in here,
16 then I need to read it.

17 Q. First of all, do you remember -- there was a
18 discussion about whether to incorporate
19 language from the Executive Risk policy in
20 preparing an endorsement for the St. Paul
21 policy; is that correct?

22 A. There must have been because I recall the
23 endorsement. And I recall hitting the roof
24 when I saw it.

25 Q. Why is that?

1 A. Because it had nothing to do with what the
2 agreement was with us -- with AOL and St. Paul.

3 Q. And how did you think that it differed from the
4 agreement you had?

5 A. They basically took what the media policy
6 covered and excluded it from the AOL policy.

7 MR. ABELSON: Indicating MARSH632.

8 Q. (By Ms. Thorpe) And you do not believe that
9 was consistent with the intention of the
10 parties, that there would not be the overlap
11 between the Executive Risk and the St. Paul
12 policy?

13 MR. ABELSON: Assumes facts not in
14 evidence, lacks foundation.

15 A. That was never the agreement with St. Paul,
16 absolutely not.

17 Q. (By Ms. Thorpe) Was it your understanding,
18 though, that the intent was that -- we talked a
19 moment ago about the original intent in April,
20 '99, that there would not be gaps in the
21 insurance program; correct?

22 A. That's always the intent.

23 Q. And the intent -- isn't it always the intent
24 not to have overlaps so that your client is not
25 paying multiple premiums for the same coverage?

1 "They agree it's wrong, they kind of agree with
2 you, Glenn, but they need to have somebody else
3 say it's okay before they can actually put the
4 endorsement on the policy."

5 Q. And what was discussed as far as Bob Dittmore?

6 A. I don't recall, I don't know.

7 Q. Down in the next section you have, "Question:
8 Slip and fall (all online activities) and
9 auto." Do you recall any discussion regarding
10 those issues?

11 A. I don't recall what -- I don't even know what
12 that means. I didn't take very good notes that
13 day. I don't know what that means.

14 Q. After the June 30 conference call, did St. Paul
15 provide language to be endorsed to the policy?

16 A. Yes. Just to clarify, they had already
17 provided some language.

18 Q. Which we just started to talk about.

19 A. You're right, that's why I hesitated when you
20 said -- they provided new language.

21 Q. The language you talked about before was
22 inadequate?

23 A. Right.

24

(Deposition Exhibit No. 48 was marked

25

for identification.)

1 Q. (By Ms. Thorpe) Let me hand you what we've
2 marked as Exhibit 48, which is a July 5, 2000,
3 e-mail from Angie Adams to Mike O'Connor copied
4 to Michele Midwinter and it has also some
5 earlier e-mails attached, but I'm focused on
6 that top e-mail and it says, "Per our
7 conversation, see below. For the purposes of
8 advertising injury and personal injury, all
9 online activities are excluded from these
10 coverages. All other terms and conditions of
11 the policy remain the same. Thanks, Angie."

12 Do you recall seeing an e-mail from
13 Angie Adams following your June 30, 2000,
14 conference call that sent this proposed
15 language.

16 A. I wasn't copied on this e-mail, so I ...

17 MR. ABELSON: She's asking you if you
18 recall independent of this.

19 Is that correct, Sara?

20 MS. THORPE: Yes.

21 A. Yes, I remember that they had proposed language
22 that I, again, had an issue with.

23 Q. (By Ms. Thorpe) Marked previously as
24 Exhibit 38, MARSH609, 610, and that's a July
25 10, 2000, e-mail to you from Mike O'Connor. Do

1 like that as an insurance professional.

2 And then when I said "all online
3 activities," then you combine the word "all,"
4 which is all-encompassing, with online
5 activities, then I'm like, well, shit, what's
6 online and what's not online, which is the
7 conversation that you and I have had repeatedly
8 here. And my feeling was that there was a
9 great deal of our business that was online and
10 then there was a great deal of our business
11 that wasn't online and I don't know that there
12 was a meeting of the minds on what's online and
13 what's not online. So then I said, this is a
14 formula for disaster when I read this.

15 Q. The St. Paul policy was endorsed with this
16 language; is that right?

17 A. I don't know.

18 Q. Okay. Let me show you and see if it refreshes
19 your memory. Going back to Exhibit 1, and I'll
20 refer you to SPM333 --

21 A. So this made it on to the policy you're telling
22 me?

23 MR. ABELSON: She's about to show you
24 that.

25 THE WITNESS: Okay.

1 correct?

2 A. Right. But your question wasn't what was
3 accepted, your question was what did I think.

4 Q. And we talked earlier about a June 30
5 conference call and Angie Adams proposed some
6 language and you accepted that language;
7 correct?

8 A. No.

9 MR. ABELSON: That misstates the
10 record.

11 A. I did not accept that language.

12 Q. (By Ms. Thorpe) I asked you, did this reflect
13 your intentions at that time and you agreed
14 that it reflected your intentions.

15 MR. ABELSON: That's argumentative and
16 it misstates the record.

17 A. We have to go back to the record then because I
18 don't think I said that --

19 MR. ABELSON: You don't need to argue
20 with her, she's got it wrong.

21 A. I said --

22 MR. ABELSON: No, no, no, no.

23 Q. (By Ms. Thorpe) I showed you that the policy
24 got endorsed with Angie Adams' language;
25 correct?

1 A. Yes.

2 Q. And that, at that time, in August, 2000,
3 reflected the intentions of the parties that
4 the policy would cover personal injury and
5 advertising injury and exclude online
6 activities; correct?

7 MR. ABELSON: It's argumentative and
8 misstates his prior testimony.

9 A. No, I don't think that the words on that paper
10 reflected a meeting of the mind -- reflected a
11 meeting of the minds as it relates to online
12 activities.

13 Q. (By Ms. Thorpe) Is that because subsequently
14 after this conference call on June 30th you had
15 specific claims and specific examples that you
16 felt made it necessary to define online
17 activities?

18 A. No.

19 Q. Why is it that the language Angie Adams
20 proposed and that made it on to the policy did
21 not reflect the mutual intention of the
22 parties?

23 MR. ABELSON: It's been asked and
24 answered.

25 MS. THORPE: No, it hasn't, because

1 specialist at AIG and it copies you. Do you
2 see that?

3 A. I do.

4 Q. And it's enclosing a copy of the Specht lawsuit
5 and a Mueller lawsuit and indicates that if
6 there's any response, you should be copied on
7 it. Do you see that?

8 A. I do.

9 Q. Did you receive this letter?

10 A. I did.

11 Q. And were you aware that in addition to the
12 Specht lawsuit, there were three other lawsuits
13 filed with identical -- virtually identical
14 allegations as the Specht lawsuit?

15 MR. ABELSON: Question lacks
16 foundation.

17 Go ahead.

18 A. I don't specifically recall that, but I don't
19 question it either.

20 Q. (By Ms. Thorpe) Were you aware that there were
21 more than the Specht class action lawsuit that
22 were alleging this same issue with
23 SmartDownload?

24 A. Yes.

25 Q. So let's go to what we've marked before as

1 Exhibit 39, and this is an August 21, 2000,
2 e-mail from Glenn Spencer to Mike O'Connor and
3 copied to Matt Swingle, Nancy Perkins, and Dave
4 Goldberg, and it's NET/SDL11629.

5 A. I see it.

6 Q. Do you recall sending this e-mail to Mike
7 O'Connor?

8 A. Yes.

9 Q. Have you reviewed this e-mail recently?

10 A. Yes.

11 Q. Like yesterday?

12 A. Yes.

13 Q. Looking at just the first part, Items 1 and 2,
14 it's instructing Mike to make sure St. Paul has
15 changed the '99 to 2000 and 2000 to 2001
16 policies with respect to the online activities
17 exclusion; correct?

18 A. Yes.

19 Q. And you're instructing that they should make
20 sure that the personal and advertising
21 exclusion had been deleted from the policy;
22 correct?

23 A. Yes.

24 Q. And that the endorsement that Angie Adams had
25 come up with was added; correct?

1 talked to about this definition?
2 A. I don't.
3 Q. Is it possible you talked to all three?
4 A. Highly unlikely, but possible.
5 Q. Besides people in your legal department, who
6 else did you discuss the definition with?
7 A. Nancy Perkins, I'm sure that she and I talked
8 about it before.
9 Q. Anybody else?
10 A. The people at Marsh that I sent it to.
11 Q. Well, you sent them this definition, but did
12 you talk to anyone at Marsh prior to creating
13 this definition?
14 A. I'm sure I did. I wouldn't have just sent it
15 without having a conversation.
16 Q. Did you come up with the words that are in this
17 definition?
18 A. Yes.
19 Q. How did you go about determining the items to
20 include in the definition?
21 A. I used my knowledge of AOL based on sitting
22 there working on it, you know, all the time,
23 and using the service. And so with my
24 knowledge of the service and my -- my
25 understanding of the intent between the

1 parties, I developed this language.

2 Q. Did you also consider the Specht claim, which
3 you had received right in this time period?

4 A. No.

5 Q. Did you consider any other claims that were
6 coming in that might implicate personal injury,
7 advertising injury under the St. Paul policy?

8 A. I'm sure I did because I said before that there
9 were some claims that we had on our bordereaux
10 that could potentially be covered or not
11 covered as a result of this, but I can't
12 specifically recall what they were, because
13 back then, I don't know, we can go back to the
14 dates and the timeline back then, this case
15 wouldn't even have known about this case.

16 Q. And you can't, as you sit here today, recall if
17 there was any other invasion of privacy or
18 defamation of claim pending at the time that
19 you were working on this language?

20 A. I can't recall, like I said, now.

21 Q. Were you attempting to limit what online
22 activity meant?

23 A. Yes, absolutely.

24 Q. And were you -- well, let's go through the
25 words that you came up with.

1 Q. I won't tell you why I asked that, that's
2 something that lawyers came up with.

3 A. Okay.

4 Q. Online activities is defined as five examples
5 here; right?

6 A. Yes.

7 Q. E-mail services?

8 A. Yes.

9 Q. Instant messaging services?

10 A. Yes.

11 Q. Third-party advertising?

12 A. Yes.

13 Q. Supplying third-party content?

14 A. Yes.

15 Q. And providing Internet access to third parties?

16 A. Yes.

17 Q. Taking that last one, providing Internet access
18 to third parties, what was your intention
19 including that in the definition?

20 A. Providing Internet access to third parties.
21 That's what we did. I mean, that's what the
22 service -- that was at the heart of what the
23 service was.

24 Q. And using those words, did you mean just
25 having -- that the people signed up to use AOL

1 or what was included in that particular
2 definition?

3 A. Meaning that our providing or failing -- like
4 our providing Internet access, if somehow they
5 came back and said, oh, I'm on the Internet and
6 I see pornography and I'm offended by that and
7 I'm personally injured by that, you know, that
8 was a core part of what we did, so they should
9 be able to exclude that, that's a pretty unique
10 thing that most businesses don't face. So if
11 they're offended and somehow some crazy Court
12 said that we're liable because they were
13 offended, fine, you don't have to cover that
14 and that's covered by our E&O policy or our
15 publishers policy until we got rid of the
16 publishers policy.

17 Q. So was it your intent that there were services
18 and products associated with providing Internet
19 access that would be included in that
20 definition?

21 MR. ABELSON: The question is vague.

22 A. There were other products?

23 MR. ABELSON: She's asking.

24 Q. (By Ms. Thorpe) Yeah. Doesn't AOL have
25 products and services that facilitate people's

1 use of AOL as an Internet provider?

2 A. No, the Internet access is the product that
3 they're buying. In other words, they're not
4 buying -- well, I'll just use an example. When
5 you buy a house, you're not buying the hammer
6 that built the house, you're buying the house.

7 Q. Let me ask it with a more specific example.

8 A. I think that's a good example, I don't know.

9 Q. AOL and it's subsidiaries also created products
10 and services that facilitated the use of the
11 Internet, the service that they provided;
12 correct?

13 A. No. Go back to this. Is the nail in your
14 house a product or is the house the product? I
15 think the house is the product. I think
16 it's -- so I think the access to the Internet
17 is the product. It takes a bunch of stuff to
18 do that. It takes telecommunication
19 connection. Is the telecommunication a product
20 of AOL? I would argue no. Is the switch, is
21 the T1, is the switch in some -- below some
22 street in Idaho the product? Absolutely not.

23 Q. Are you picking on Idaho because of me?

24 A. The product is the access to the fact they're
25 getting on web pages. So I don't think that

1 that -- no.

2 Q. The SmartDownload product was to facilitate
3 downloading information while on the Internet.
4 Is that something that you would feel was
5 encompassed within the providing of Internet
6 access to third parties?

7 MR. ABELSON: Question lacks
8 foundation, speculative.

9 A. I think access is -- is understood. Internet
10 access, it's access to the Internet, that's
11 what this says.

12 Q. (By Ms. Thorpe) But were you intending to also
13 include the ways and products that AOL had that
14 facilitated that access?

15 MR. ABELSON: Asked and answered.
16 You still have to answer a question
17 even though my objection is there.

18 A. The question was ...

19 Q. (By Ms. Thorpe) Whether other products and
20 services AOL had that facilitated access were
21 also encompassed within your definition of
22 providing Internet access to third parties.

23 MR. ABELSON: Asked and answered.

24 A. Providing Internet access is providing -- I
25 mean, I think that's well-understood. If it

1 intention was and at that point, I knew that
2 there was not a common -- it was clear to me
3 that there wasn't a common understanding of
4 what online activities meant.

5 Q. Did the legal department change your wording in
6 the definition?

7 A. If they did, it was not substantive, these are
8 substantially my words.

9 Q. Did you consider putting in the word "only" so
10 that it would read online activities as defined
11 as only providing e-mail services, et cetera?

12 A. Well, I would never do that as a broker and I
13 clearly avoided online activities includes. I
14 mean, I wanted it to be specific so that it
15 could be -- that it would be understood, I
16 mean, that was my whole intent.

17 MR. ABELSON: Sara, are you arguing
18 that when your insurance policy defines
19 something and doesn't use the word "only," it
20 leaves it subject to interpretation?

21 MS. THORPE: No, I'm not saying that.

22 MR. ABELSON: Because I'm going to
23 have a very interesting line of questioning for
24 your underwriters, then.

25 MS. THORPE: I'm just asking him what

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1 he considered. I was going to ask him
2 including but he beat me to it.

3 Q. (By Ms. Thorpe) Once you prepared this --

4 A. Well, I'll go back -- can I go back and finish?

5 Q. Yeah.

6 A. You don't have to use "only" to mean only. It
7 says is defined, I mean, it is defined as these
8 five things, so to me this says only. Just to
9 be clear, I mean, this says only without
10 putting it in the underwriter's face, which
11 they'd never agree to.

12 Q. What did you -- did you get any feedback from
13 Mike O'Connor, Matt Swingle, Nancy Perkins or
14 Dave Goldberg after sending them this e-mail on
15 August 21, 2000?

16 A. I'm sure I did.

17 Q. Do you recall what that feedback was?

18 A. Well, at some point it ended up on the policy,
19 so that was the ultimate feedback. And I'm
20 sure there were conversations when it was
21 originally given to St. Paul between Mike and I
22 and maybe Matt and I -- I should say the Marsh
23 people and I and/or Nancy about, yeah, they're
24 okay with it, no, they're not okay with it.
25 You know, there were, I'm sure, conversations