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 Attorneys for Defendant  
 7 ST. PAUL MERCURY INSURANCE COMPANY

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

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12	NETSCAPE COMMUNICATIONS CORPORATION, a Delaware corporation; and	)	CASE NO. 5:06-CV-00198 JW (PVT)
13	AMERICAN ONLINE, INC., a Delaware corporation,	)	<b>DECLARATION OF DANIEL WEISS IN SUPPORT OF ST. PAUL'S MOTION FOR SUMMARY ADJUDICATION AND OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT</b>
14		)	
15	vs.	)	
16	FEDERAL INSURANCE COMPANY, an Indiana corporation, et al.,	)	
17		)	Complaint Filed: 12/12/05
18	Defendants.	)	Amended Complaint: 2/24/06

19  
 20 I, Daniel Weiss, declare as follows:

21 1. I am an attorney duly licensed to practice in the state of Minnesota. I have  
 22 personal knowledge of the matters stated here unless indicated that my statements are based upon  
 23 information and belief. If called as a witness I would so testify.

24 2. Starting in May 2001, I was a Technology Claim Attorney for the Technology  
 25 Claim unit of the St. Paul Companies located in St. Paul, Minnesota. I had responsibility for,  
 26 among other things, handling certain claims presented under the St. Paul policy no. TE09000917  
 27 issued to AOL and its subsidiaries. The Technology Claim unit at St. Paul handled certain types  
 28 of claims involving technology-related issues, whereas other claim units handled other types of

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1 claims, such as auto claims.

2 3. During the one and one-half years that I was a Technology Claim Attorney in the  
3 Technology Claims unit at St. Paul, I was responsible for handling many claims tendered by  
4 AOL. During this time period, I was in frequent contact with Marsh (AOL’s insurance agent),  
5 and directly with AOL’s legal department regarding specific claims.

6 4. During late 2001 and all of 2002, I was also involved with the coverage litigation  
7 AOL filed against St. Paul in Virginia referred to as the “5.0 litigation.” In connection with the  
8 insurance claims underlying the 5.0 litigation, I provided a declaration to the Virginia court in  
9 February 2002 and was deposed in April 2002.

10 5. While I was a Technology Claim Attorney, I was responsible for handling the  
11 insurance claims submitted by AOL in connection with the class action suits against AOL and  
12 Netscape involving SmartDownload and the related AG Investigation. I have reviewed the two  
13 files St. Paul maintained for these claims, one for the class actions and one for the AG  
14 Investigation [marked collectively by AOL in this lawsuit as Ex. 128]. These claim files were  
15 maintained by St. Paul in the ordinary course of business, and it was St. Paul’s business practice  
16 to place in its claim files all written communications with its insured, as well as all documents  
17 provided to St. Paul in connection with a claim. Upon information and belief, the claims contain  
18 all written communications between St. Paul and AOL and all documents provided to St. Paul in  
19 connection with the insurance claims involving four class actions and the AG Investigation.

20 6. In connection with this coverage lawsuit, I was asked to review and determine  
21 whether certain documents provided to the court by plaintiffs were submitted during the claim  
22 process to St. Paul. I have reviewed and determined that St. Paul was **not** provided with the  
23 following documents during the claim process:

- 24 a. PowerPoint settlement presentation (Ex. H to Carome Decl.);
- 25 b. @stake report (Ex. J to Carome Decl.);
- 26 c. David Park’s Deposition in the Underlying SmartDownload litigation  
27 against AOL and Netscape (taken October 20, 2003);
- 28 d. Augusta Feature Plan dated August 25, 1998 (Ex A to Park Decl.);

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- e. September 18, 1998 memo (Ex. B to Park Decl.);
- f. Software Requirements Spec. for NSDA (Ex. D to Park Decl.);
- g. Augusta Feature Plan dated September 20, 1998 (Ex. E to Park Decl.);
- h. September 30, 1998 memo (Ex. F to Park Decl.).

Executed this 9th day of February 2007, in St. Paul, Minnesota.

  
 \_\_\_\_\_  
 DANIEL WEISS

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