

1 Maura Walsh Ochoa (SBN 193799)
 mochoa@ghlaw-llp.com
 2 Todd C. Harshman (SBN 240942)
 tharshman@ghlaw-llp.com
 3 GROTEFELD HOFFMANN
 655 Montgomery Street, Suite 1220
 4 San Francisco, California 94111
 Telephone: 415.344.9670
 5 Facsimile: 415.989.2802

6 Attorneys for Plaintiff
 LEXINGTON INSURANCE COMPANY

7
 8 Thomas R. Beer (SBN 148175)
 tbeer@mail.hinshawlaw.com
 Peter J. Felsenfeld (SBN 260433)
 9 pfelsenfeld@mail.hinshawlaw.com
 HINSHAW & CULBERTSON LLP
 10 One California Street, 18th Floor
 San Francisco, CA 94111
 11 Telephone: 415-362-6000
 Facsimile: 415-834-9070

12 Attorneys for Defendants
 13 GD MIDEA ENVIRONMENT APPLIANCES MFG. CO. and
 SMC MARKETING CORPORATION
 14

15 **UNITED STATES DISTRICT COURT**
 16 **NORTHERN DISTRICT OF CALIFORNIA**
 17 **SAN FRANCISCO DIVISION**
 18

19 LEXINGTON INSURANCE COMPANY,)
 20 Plaintiff,)

21 v.)

22 SMC MARKETING CORPORATION;)
 CHINA OVERSEAS GRAND OCEANS)
 23 GROUP LIMITED; GD MIDEA)
 ENVIRONMENT APPLIANCES MFG. CO.,)
 24 LTD.; and DOES 1 through 25, inclusive,)
 25 Defendants.)

Case No.: 14-cv-02081-VC

JOINT CASE MANAGEMENT
STATEMENT & [PROPOSED] ORDER
 DENYING REQUEST TO CONTINUE THE CMC

26 LEXINGTON INSURANCE COMPANY, GD MIDEA ENVIRONMENT
 27 APPLIANCES MFG. CO. and SMC MARKETING CORPORATION jointly submit this JOINT
 28 CASE MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to this Court's Order

1 re Initial Case Management Conference dated January 16, 2015, the Standing Order for All
2 Judges of the Northern District of California dated July 1, 2011 and Civil Local Rule 16-9.

3 As the Court is aware, service under the Hague Convention is still outstanding as to
4 Defendant CHINA OVERSEAS GRAND OCEANS GROUP LIMITED, but Plaintiff hopes that
5 the Central Authority will effect service within the next three months. Accordingly, the parties
6 submit two proposed orders, one in accordance with the following, and one continuing the CMC
7 until November 3, 2015, which would make the parties' joint statement due the same date as
8 their stipulation to ADR, on October 27, 2015.

9
10 1. Jurisdiction & Service

11 This action was removed from California state court by Defendant GD MIDEA
12 ENVIRONMENT APPLIANCES MFG. CO. The parties stipulate that this Court has subject
13 matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1332 and 1441, and that the Court
14 has personal jurisdiction over Defendants. The parties further stipulate that venue is proper in
15 this District pursuant to 28 U.S.C. § 1391(b).

16 Defendant SMC MARKETING CORPORATION has been served and has appeared.
17 Defendant CHINA OVERSEAS GRAND OCEANS GROUP LIMITED, a Chinese corporation
18 located in Hong Kong, is presently being served under the Hague Convention. Plaintiff has been
19 contacted by counsel representing China Overseas Grand Oceans Group Limited but has yet to
20 receive confirmation from the Central Authority. Plaintiff proposes that this service under the
21 Hague Convention will be complete by October 31, 2015.

22 2. Facts

23 Plaintiff's Statement

24 Plaintiff Lexington Insurance Company ("Lexington") is the property insurer for CA,
25 Inc., a company located in Redwood City. On April 13, 2011, a fire broke out in CA, Inc.'s
26 server room. The fire was determined to originate in a fan manufactured by a Chinese company,
27 Defendant GD Midea. The fan was distributed by and carried the label of another Chinese
28 corporation, Shell Electric Mfg. Co. Ltd., now doing business as Defendant China Overseas

1 Grand Oceans Group Limited. Defendant SMC Marketing Corporation is believed to be this
2 company's United States presence.

3 All parties were invited to examination of the fan and an exemplar also in use in CA,
4 Inc.'s server room. Plaintiff's examination determined that the fan's motor overheated, causing
5 the fire.

6 Plaintiff's insured suffered damages to its computer equipment, as well as fire, soot,
7 smoke, and water damage to its building, for which Lexington paid under CA, Inc.'s insurance
8 policy. Lexington is subrogated to its insured's claims to the extent of those payments, which
9 total \$706,954.92.

10 Plaintiff anticipates the following factual issues will need to be resolved:

- 11 1. Did the subject fan contain a manufacturing defect?
- 12 2. Did the subject fan's manufacturing defect cause the fire?
- 13 3. Did the subject fan contain a design defect in that it did not incorporate safety
14 features such as thermal cut-off devices to prevent overheating and fire?
- 15 4. What is the proper amount of damages resulting from the fire?

16 Defendant's Statement

17 Defendants GD Environment Appliances Mfg. Co. ("GD Midea") and SMC Marketing
18 Corporation ("SMC") had not yet been served when the subject fan that allegedly caused the
19 underlying loss was inspected. Defendants GD Midea and SMC are presently analyzing
20 evidence from the inspection and reserves the right to amend its response as discovery
21 progresses.

22 3. Legal Issues

23 *A brief statement, without extended legal argument, of the disputed points of law, including*
24 *reference to specific statutes and decisions.*

25 Plaintiff anticipates the following legal issues will need to be resolved:

- 26 1. Whether the manufacturer was negligent in the manufacture of the fan?
- 27 2. Whether the manufacturer was negligent in the design of the fan?
- 28 3. Whether the manufacturer's negligence was the legal cause of the fire?

1 4. Whether a manufacturing defect was the legal cause of the fire?

2 Defendant anticipates the following legal issues will need to be resolved:

- 3 1. Whether it was in the “chain of commerce” for the product at issue;
4 2. Whether the subject product was defective;
5 3. Whether Defendant GD Midea was the legal cause of the underlying loss;
6 4. Whether Plaintiff misused or altered the subject product.

7 4. Motions

8 Plaintiff anticipates filing dispositive or potentially dispositive motions including motions
9 to exclude experts where expert testimony is required to prove a defense or disprove Plaintiff’s
10 case, and *motions in limine* to narrow the issues for trial.

11 Defendants GD Midea and SMC anticipate similar motion practice as Plaintiff.

12 5. Amendment of Pleadings

13 No parties, claims, or defenses are expected to be added or dismissed at this point.

14 However, in an abundance of caution, the parties suggest the following deadlines:

15 The cutoff dates for filing a motion to amend pleadings are:

16 Plaintiff September 15, 2015

17 Defendant(s) September 15, 2015

18 The cutoff dates for filing a motion to join additional parties are:

19 Plaintiff September 15, 2015

20 Defendant(s) September 15, 2015

21 6. Evidence Preservation

22 The parties have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable
23 and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in
24 this action.

25 At this stage in the litigation, the parties do not anticipate any issues about disclosure or
26 discovery of electronically stored information, including the form or forms in which it should be
27 produced.

1 7. Disclosures

2 The parties will exchange by October 30, 2015 the initial disclosures required by Rule
3 26(a)(1).

4 8. Discovery

5 *Discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or*
6 *modifications of the discovery rules, a brief report on whether the parties have considered*
7 *entering into a stipulated e-discovery order, a proposed discovery plan pursuant to Fed. R. Civ.*
8 *P. 26(f), and any identified discovery disputes.*

9 Plaintiff Lexington has informally provided Defendants GD Midea and SMC with its
10 expert report, photographs, and damage documents. Plaintiff has propounded written discovery
11 on GD Midea with responses due on September 17, 2015. Plaintiff anticipates propounding
12 discover on SMC once service is completed and SMC appears. No e-discovery issues are
13 expected to arise. Discovery is necessary on the following subjects:

14 Plaintiff

15 The manufacture and design of the subject fan, the history of fires associated with the
16 subject fan, the failure mode of the subject fan, facts, documents, and witnesses supporting
17 asserted defenses. Discovery need not be conducted in phases or limited to particular issues.

18 Defendant

19 Expert discovery is already underway and may make some aspects of fact discovery
20 unnecessary. Defendants GD Midea and SMC generally agree with Plaintiff's proposed scope of
21 discovery.

22 The following discovery methods will be used:

23 Oral Exam Depositions

24 Plaintiffs 10

25 Defendants 10

26 Maximum no. hrs. per deposition 7 (unless extended by agreement)

27 Interrogatories 25

28 Admissions 25 (exclusive of genuineness of documents requests)

1 Requests for Production of Documents 50

2 The parties having agreed to a clawback agreement, and good cause appearing therefore,
3 the Court hereby orders as follows:

- 4 i. For purposes of this Clawback Agreement, an “Inadvertently Produced Document” is
5 a document produced to a party in this litigation that could have been withheld, in
6 whole or in part, based on a legitimate claim of attorney-client privilege, work-
7 product protection, or other applicable privilege.
- 8 ii. Inclusion of any Inadvertently Produced Document in a production shall not result in
9 the waiver of any privilege or protection associated with such document, nor result in
10 a subject matter waiver of any kind.
- 11 iii. A producing party may demand the return of any Inadvertently Produced Document,
12 which demand shall be made to the receiving party’s counsel in writing and shall
13 contain information sufficient to identify the Inadvertently Produced Document.
14 Within five (5) business days of the demand for the Inadvertently Produced
15 Document, the producing party shall provide the receiving party with a privilege log
16 for such document that is consistent with the requirements of the Federal Rules of
17 Civil Procedure, setting forth the basis for the claim of privilege for the Inadvertently
18 Produced Document. In the event that any portion of the Inadvertently Produced
19 Document does not contain privileged information, the producing party shall also
20 provide a redacted copy of the Inadvertently Produced Document that omits the
21 information that the producing party believes is subject to a claim of privilege.
- 22 iv. Upon receipt of a written demand for return of an Inadvertently Produced Document,
23 the receiving party shall immediately return the Inadvertently Produced Document
24 (and any copies thereof) to the producing party and shall immediately delete all
25 electronic versions of the document.
- 26 v. The receiving party may object to the producing party’s designation of an
27 Inadvertently Produced Document by providing written notice of such objection
28 within five (5) business days of its receipt of a written demand for the return of an
Inadvertently Produced Document. Any such objection shall be resolved by the Court
after an in camera review of the Inadvertently Produced Document. Pending
resolution of the matter by the Court, the parties shall not use any documents that are
claimed to be Inadvertently Produced Documents in this litigation.

9. Class Actions

Not applicable.

10. Related Cases

Not applicable.

11. Relief

*All relief sought through complaint or counterclaim, including the amount of any damages
sought and a description of the bases on which damages are calculated. In addition, any party*

1 from whom damages are sought must describe the bases on which it contends damages should be
2 calculated if liability is established.

3 Plaintiff seeks:

- 4 1. Actual damages to the real and business personal property of Plaintiff's insured as a
5 result of the fire in the amount of \$706,954.92.
- 6 2. Prejudgment interest pursuant to California Civil Code § 3287. Prejudgment interest
7 should be awarded at 7% per annum since the date of the fire on April 13, 2011, since
8 Plaintiff's damages are certain. See California Constitution, Article 15, section 1; and
9 *Children's Hospital and Medical Center v. Bonta*, (2002) 97 Cal.App.4th 740, 775.
- 10 3. Postjudgment interest pursuant to California Code of Civil Procedure § 685.010-.020.
11 Postjudgment interest should be awarded at 10% per annum from the date of entry of
12 judgment. *Id.*
- 13 4. An award of costs of suit.

14 Defendant seeks:

- 15 1. Defendants GD Midea and SMC are presently not in a position to respond but reserve
16 the right to amend their response in the event discovery determines that Defendants
17 GD Midea and SMC are entitled to relief.

18 12. Settlement and ADR

19 *Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case, including*
20 *compliance with ADR L.R. 3-5 and a description of key discovery or motions necessary to*
21 *position the parties to negotiate a resolution.*

22 The parties expect to stipulate to mediation pursuant to ADR L.R. 6, but await the
23 appearance of the remaining Chinese defendant. The mediation completion date will be
24 addressed in the parties' ADR stipulation.

25
26 13. Consent to Magistrate Judge For All Purposes

27 *Whether all parties will consent to have a magistrate judge conduct all further proceedings*
28 *including trial and entry of judgment. ___ YES ___X_ NO*

1 Defendants GD Midea and SMC do not consent to a magistrate judge.

2 14. Other References

3 *Whether the case is suitable for reference to binding arbitration, a special master, or the*
4 *Judicial Panel on Multidistrict Litigation.*

5 Not applicable.

6 15. Narrowing of Issues

7 *Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation*
8 *of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate*
9 *issues, claims, or defenses.*

10 Plaintiff believes that the parties may be able to stipulate to factual issues regarding the
11 manufacture and distribution of the subject fan and to the amount paid by Lexington to its
12 insured. At this point, however, discovery has not yet commenced and is thus not mature enough
13 to state for certain what issues may be narrowed.

14 Defendants GD Midea and SMC are presently not in a position to respond or agree to a
15 narrowing of issues. GD Midea and SMC reserve the right to amend their response as discovery
16 progresses.

17 Suggestions to expedite the presentation of evidence at trial, or whether bifurcation of
18 issues, claims, or defenses are appropriate, and the parties intend to address these issues as
19 discovery proceeds and the issues become clearer.

20 16. Expedited Trial Procedure

21 *Whether this is the type of case that can be handled under the Expedited Trial Procedure of*
22 *General Order 64, Attachment A. If all parties agree, they shall instead of this Statement, file an*
23 *executed Agreement for Expedited Trial and a Joint Expedited Case Management Statement, in*
24 *accordance with General Order No. 64, Attachments B and D.*

25 The parties do not believe that this case is appropriate for an expedited schedule or
26 streamlined procedures.

1 17. Scheduling

2 *Proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions,*
3 *pretrial conference and trial.*

4 The parties propose the following schedule:

5 Last day to file written discovery and standard motions to compel: April 29, 2016

6 Close of fact discovery: May 13, 2016

7 Reports from experts under Rule 26(a)(2) will be submitted on:

8 Parties bearing burden of proof: May 31, 2016

9 Response: June 21, 2016

10 Expert Discovery cutoff: July 19, 2016

11 Deadline for filing dispositive or potentially dispositive motions including motions to
12 exclude experts where expert testimony is required to prove the case: August 19, 2016

13 Pretrial conference: September 30, 2016

14 Trial: October 31, 2016

15 18. Trial

16 *Whether the case will be tried to a jury or to the court and the expected length of the trial.*

17 Jury trial, 3 to 5 days.

19 19. Disclosure of Non-party Interested Entities or Persons

20 Each party has filed its “Certification of Interested Entities or Persons” as required by
21 Civil Local Rule 3-15. Plaintiff Lexington Insurance Company is a direct, wholly-owned (100%)
22 subsidiary of AIG Property Casualty U.S., Inc., which is a wholly-owned (100%) subsidiary of
23 AIG Property Casualty, Inc., which is a wholly-owned (100%) subsidiary for American
24 International Group, Inc., which is a publicly-held corporation. No parent entity or publically
25 held entity owns 10% or more of the stock of American International Group, Inc. No other such
26 entities or persons have been identified save the parties to this lawsuit.

1 20. Professional Conduct

2 All attorneys of record for the parties have reviewed the Guidelines for Professional
3 Conduct for the Northern District of California.

4 21. Other

5 *Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.*

6 None at this time

7 Dated: August 18, 2015

GROTEFELD HOFFMANN

8
9 */s/ Todd Harshman* _____

10 TODD HARSHMAN
11 655 Montgomery Street, Suite 1220
12 San Francisco, CA 94111
tharshman@ghlaw-llp.com
Attorneys for Plaintiff LEXINGTON

13 Dated: August 18, 2015

HINSHAW & CULBERTSON LLP

14
15 */s/ Thomas R. Beer* _____

16 THOMAS R. BEER
17 One California Street, 18th Floor
18 San Francisco, California 94111
tbeer@mail.hinshawlaw.com
19 Attorneys for Defendant GD MIDEA and
20 SMC MARKETING CORPORATION
21
22
23
24
25
26
27
28

1 [SECOND PROPOSED] CASE MANAGEMENT ORDER

2
3 The Initial Case Management Conference is continued from August 25, 2015 until

4
5 November 3, 2015, with the parties' joint Rule 26(f) report due October 27, 2015;
6 or

7
8 _____, with the parties' joint Rule 26(f) report due
9 _____.

10
11
12 IT IS SO ORDERED.

13 Dated: August 21, 2015

