Franchise Mediation Program
Steering Committee
Hamburger University
Oak Brook, Illinois
May 5, 2009

The Steering Committee of the Franchise Mediation Program met at 9:00 on May 5, 2009, at Hamburger University, McDonald’s Campus, Oak Brook Illinois. Co-Chairs John Kujawa and Bill Hall called the meeting to order and invited attendees to introduce themselves.

Lee N. Abrams
Mayer Brown LLP

John Kujawa (Co-Chair)
McDonald’s USA LLC

Kay Marie Ainsley
Michael H. Seid & Associates LLC

Barbara Moran
Moran Industries Inc.

Marcus Banks
Wyndham Worldwide Corporation

Jay S. Patel
LHS Companies

Rupert M. Barkoff
Kilpatrick Stockton LLP

Nimesh Patel
InterContinental Hotels Group

Leslie D. Curran
Plave Koch PLC

Richard L. Rosen
Richard L. Rosen Law Firm PLLC

David French
International Franchise Association

Fred Schwartz
Asia American Hotel Owners Association

Robyn Fuller
LQ Management LLC

Peter R. Silverman
Shumaker, Loop & Kendrick

William G. Hall (Co-Chair)
William G. Hall & Company

For CPR Institute:
F. Peter Phillips, Consultant

Mr. Hall reported that former Committee Chair Mort Aronson recently received the Lifetime Achievement Award from the AAFD in recognition of his 50 years of service to the franchise community and to franchise relations.
The minutes of the meeting of February 15, 2009, were approved as submitted.

Guest speaker Lee Abrams discussed the tendency of litigants to be more interested in winning the contest than in resolving the business problem giving rise to the dispute. This tendency is particularly regrettable in franchise, where relationships need to be protected and strengthened. He called mediation “negotiation with adult supervision.” While noting the efficiencies of mediation, he voiced skepticism of mandatory mediation, in which predispositions sometimes dominate over common sense and practical business thinking. One role of the lawyer is to convince the client to participate willingly in mediation.

He also spoke about the mediator selection process and the skills necessary to serve franchise clients. Whether franchise mediators need to be expert in franchise matters in order to be effective is an open question. There are advantages to selecting a neutral that neither side had worked with before, assuring the perception of impartiality. He also encouraged the practice of communication with the mediator prior to the mediation itself.

Mr. Abrams continued that the party representatives should committed to making the process work. Representatives of associations should be of one mind, and avoid infighting. Parties should also be prepared to use the mediator not to determine who is right or wrong, but to help them come to a business solution acceptable to the parties. At the same time, mediator evaluation of a party’s strengths and weaknesses can be tactically useful in certain instances. He recommended that parties in pre-suit mediation not hesitate to explain to the other side their intention to move ahead with litigation if negotiations fail, and not hold back strategies or facts in anticipation of litigation.

He concluded that the franchise bar must be more persuasive that litigation is to be avoided and dialogue, including mediation, should be pursued. He noted that the party representative should not simply be someone with a relationship to the other side, or who has dollar authority, but rather someone who is in a position to make system or contract changes that may be needed in order to solve the problem at the core of the issue.

Barbara Moran, CEO of Moran Industries, introduced herself and explained her interest in dispute resolution. She is a former franchisee and franchisor, and believes that business relationships are all-important in the business. She is Chair of the Franchise Relations Committee and of the Board of Directors of the IFA. The mission of the Franchise Relations Committee is to provide information to both franchisors and franchisees on how to maintain and improve good business relationships. Information is available on the Committee’s web site at the IFA. She also advocates a mentorship program matching new franchisees with successful ones.

Mr. Phillips reported on the meeting of the Marketing committee pursuant to February’s full committee meeting. He noted certain deliverables that arose from that session, some of which the people involved were not present to report on. However, the
IFA will provide ad space in *Franchise World*. The group discussed several of the topics raised in the committee’s report, particularly the book and the website.

As to the book, the project was an effort to pull together various essays on the topic of managing franchise relationships and mediation’s role in that effort. Mr. Silverman has made suggestions for revision that, because the book is printed to order, could be incorporated in subsequent printings. Mr. Hall suggested that he and Mr. Silverman work together over a period of time to present to the Committee a proposed new edition. Mr. Barkoff suggested that an outside reader review the book and make suggestions, though it was acknowledged that Mr. Silverman’s response may constitute just such a review. Mr. Silverman distributed copies of his own recent book and encouraged the committee to emulate it in certain respects: redesign the book to shorten it and make it easier to read. He encouraged the inclusion of more war stories, making the writing more accessible, making the book physically smaller and shorter, including an index and taking out redundancies. Mr. Phillips expressed concern about delaying marketing of the current book (which has been in process since late 2006) while it is being improved. Mr. Kujawa suggested that the goal would be for every participant – franchisors and associations -- to distribute the book in a form that invites them to read it and to learn how to avoid “doing stupid stuff” in their business relationships. The group discussed the target audience for the publication and agreed that franchisor systems were an essential core target – to educate franchisors in why mediation is important. Franchisees also get legal and business advice from professionals who are not well versed in either franchise principles or ADR.

The group also discussed the viability of a pledge or supportive statement from major franchisors, such as the one that the Program promulgated in 1993. In general, it was agreed that it would be difficult to accomplish this, and questionable whether it would provoke the kind of change that the Program desires.

Mr. Hall and Mr. Silverman will prepare required changes for the Committee’s review. The current book will continue to be offered for sale but not actively marketed until the revised book is ready. At that time colleagues from the IFA and other bodies will be enlisted to assist in its distribution and marketing.

On the web site issue, it was suggested that an independently designed web site precede the CPR page, stating more simple information and links to the salient elements of the Program – including the current page and the information on it. The web site should be as user-friendly as a business, and a record should be kept as to who and how it is being used. Mr. Hall and Mr. Phillips will discuss these possibilities with CPR. The list of hospitality neutrals should be reinstated.

Mr. Hall said that more business people – both franchisors and franchisees – need to be brought on to the Committee. To be meaningful, the Program needs to be business-oriented. Mr. Banks suggested that smaller companies need to be invited. Mr. Phillips urged that invitees be business people, rather than attorneys, so that the management
point of view is represented rather than the legal one. Lawyers might be the right gateway to identify those people.

Mr. Hall is working on a budget document, but CPR has not been able to identify financial activity and the strategy of the future activities should drive the financial needs. The question of whether to meet a third time this year was discussed and taken under advisement.

The meeting adjourned at 12:00.

Respectfully submitted,

F. Peter Phillips