INTRODUCTION AND WELCOME

Mr. Aronson convened the meeting at 9:05 a.m. and welcomed the group. He asked the attendees to introduce themselves and share their backgrounds. He also thanked Cendant Corporation for its gracious hosting of the meeting.

APPROVAL OF MINUTES

The Minutes of November 13, 2003 were approved as submitted.

RECENT EVENTS AND REPORTS OF EXPERIENCES

Mr. Aronson reported that he had recently visited McDonald’s headquarters and made a presentation to their legal group.

Mr. Schwartz reported on the Annual Meeting of AAHOA, and the efforts of that Association to sign up individual franchisees for adopting mediation as a policy in dealing with franchisors. One obstacle to success in these public meetings is the reluctance of individuals to identify themselves as having disputes. Private approaches may be better.
Mr. Hall wrote an article for April issue of *Franchising World* that described the Program, and he has received many comments and inquiries on it. He believed that the Program still is not widely recognized and more such publicity is needed, especially among small and mid-sized franchisors. Mr. Schwartz said that much of the persuasion and education needs to take place on a one-to-one basis.

Mr. McLester reported on a series of mediation roundtable discussions at the IFA Legal Roundtable. He reported that many people felt that the Program’s Panel of Neutrals did not contain mediators with industry-specific knowledge, both in business and law. Many users are looking locally for neutrals, though they may not be able to find what they are looking for. Mr. Purvin reported a different user response – that they believe that they can find qualified people without paying a fee to NFMP. The topic was reserved for later discussion.

Mr. Purvin related an anecdote concerning an arbitration during which the parties indicated that at one point they had been very close in settlement. They also discovered a mandatory mediation clause in the franchise agreement, that neither attorney had invoked. Mr. Aronson related a different anecdote in which a company with a mandatory mediation clause had no genuine interest in mediation and Mr. Aronson declined to act as mediator, considering it futile. A discussion ensued as to the utility of bringing parties to the table where it is clear that one side (or its counsel) is not sincerely interested in engaging in the mediation process. Several members believed that a contractual requirement sets the appropriate tone for the relationship and may be effective in overcoming one of the greatest obstacles to the process – getting the parties to the table in the first place.

**REPORT ON PROGRAM USAGE**

Mr. Phillips reported on usage of the Program. He noted that even among Committee members many more mediations had taken place than are reflected on the Program’s usage statistics, suggesting that the Program is not looked to as a provider of neutral selection services, even by its own leadership. The group discussed the development of local, non-centralized mediation service providers as well as court-annexed mediation processes, which place the low number of submitted programs in further perspective.

**REPORTS OF ORGANIZATIONS**

Mr. Schwartz reported that the AAHOA program has rolled out during a 12-month process starting with a mock mediation at the 2003 annual meeting and ending with a recent press release. The AAHOA program does not independently administer cases, and encourages franchisees to initiate the process by approaching franchisors. A series of “town hall” meetings is planned to explain the benefits of the program. Hotel franchisors are also urged to advise the AAHOA program of the pendency of any litigation that could be mediated. Mr. McLester offered to meet with attorneys for a current identified dispute. Mr. Rosen urged that the Program has to be franchisor-driven. Mr. Kujawa felt the exact opposite
that the franchisee is driven to build the relationship in a way that mediation can provide. Mr. Hall applauded AAHOA for its efforts and called it a tremendous success along the exact lines that NFMP tries to encourage. Mr. Purvin emphasized the role of neutral advocacy organizations such as AAHOA and NFMP in promoting the use of mediation.

Mr. Phillips reported on CPR’s current activities, especially internationally. He also asked members of the Committee to consider association with the Institute as members.

CHAIRMAN’S REMARKS

Mr. Aronson applauded the members for accepting responsibilities outside and beyond their company, aimed at benefiting the community as a whole. The NFMP, in his view, was such an activity, and participation of the committee members (often at personal expense) is praiseworthy. The impact of the group goes beyond case levels, in his view, and the program has a robust future through initiatives such as AAHOA’s. He expressed deep personal and professional satisfaction from his activities in mediation and thanked the NFMP and CPR for opening that part of his professional career. He announced that he would be stepping down from the Chair and that Scott McLester and Bill Hall had agreed to serve as co-Chairs of the Program. Mr. Aronson added that he intended to remain a member of the Committee.

Mr. McLester thanked Mr. Aronson for his service and noted his high and effective service as spokesperson and advocate, and his industry-wide contributions and impact on mediation in the industry. Mr. Hall hoped that Mr. Aronson would be sure to continue to be active in the Program.

DISCUSSION OF PROGRAM MISSION

Mr. Hall summarized the discussion of mission that predominated the last meeting of the Committee. Mr. McLester discussed the draft Mission, Product and Customer statements proposed by the subcommittee that had been appointed to address these issues. The Mission purposely does not include reference to CPR, nor even to provision of services, but rather education and information, with facilitation of mediator selection if needed. Mr. McLester also noted that convening the leadership through the Steering Committee is a critical part of the mission.

The Committee discussed the nature of disputes that are susceptible to mediation, and how to go about that policy. The topics included whether quality issues, terminations or other similar issues can or should be mediated.

Mr. Schwartz presented the idea of a “private label” of hospitality mediators in order to make users of the AAHOA program more comfortable with the specific skills and backgrounds of those serving in that capacity. Mr. Aronson emphasized the unique nature of the AAHOA constituency and its needs. The existence of such a distinct panel also may allow monitoring of satisfaction by users. It may also serve as a model for other groups such
as fast-food franchises. The question was raised whether this is a subpanel of NFMP or a distinct list offered by (or co-branded with) AAHOA. It was agreed that AAHOA create a list of proposed names, and CPR review its own current Panel, to identify nominees to be reviewed by franchisor and franchisee members of the committee and, ultimately, by CPR. An augmented group of neutrals would then be identified as a “hospitality panel” that AAHOA could promote as part of its program.

The “product statement” was discussed and it was noted that it was phrased similar to a mission statement. However, the product is indeed the promotion of mediation in a variety of ways (such as rules, neutral lists, speaking engagements, ads, and so forth). It was also noted that these are marketing tools to deliver the product – which is mediation in the franchise community.

In discussing the draft customer statement, it was noted that franchisors and franchisees are the customers of first instance, not the lawyers or advisors for either one. On the other hand, lawyers and advisors both execute and influence company policy decisions, and are necessary participants if the program’s mission is to be met. It was also suggested that passive beneficiaries of the program (such as the courts) should not be considered if the customer definition is intended to drive the marketing effort.

The subcommittee will meet again in person, to redraft these statements to make a clear articulation of what the NFMP does, in order to have a later focused conversation on how to market these products and capabilities, and identify the resources needed to succeed.

A member suggested that franchisors identify, from their current litigation docket, cases that can be sent to mediation. Certain franchisors mentioned that their management or ombudsman programs are sufficiently thorough that, once a matter survives to litigation, the sides are relatively firm.

A member requested that materials and agenda be distributed prior to the next Steering Committee meeting and Mr. Phillips undertook to do so. Mr. Prusher offered to host the next meeting in Miami, in late October or early November.

The meeting adjourned at noon.

Respectfully Submitted,

F. Peter Phillips