The Steering Committee of the Franchise Mediation Program met pursuant to notice duly given on Friday October 19, 2007, at the offices of the International Institute for Conflict Prevention and Resolution in New York City. Co-Chair Bill Hall welcomed the group and thanked them for their service. Those present introduced themselves:

Kay Marie Ainsley
Michael H. Seid & Associates, LLC

Marcus Banks
Wyndham Worldwide Corporation

Charles Broun III
InterContinental Hotels Group

John F. Dienelt (by phone)
DLA Piper US LLP

Robyn Fuller
LQ Management LLC

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

Scott McLester (by phone)
Wyndham Worldwide Corporation

Robert L. Purvin, Jr.
American Association of Franchisees & Dealers

Richard L. Rosen
Richard L. Rosen Law Firm PLLC

Fred Schwartz
Asian American Hotel Owners Association

Edna Sussman
New York, NY

For CPR Institute:
F. Peter Phillips, Sr. Vice President
Helena Tavares Erickson, Senior Vice President

Mr. Hall opened a discussion about the current status and future plans of the Program. He noted that the original aim of administering mediations in the franchise community had
shifted in past years to the goal of educating and advocating the use of alternatives to litigation in the community. Efforts to raise funds to support a rigorous professional educational marketing campaign, however, had absorbed the program leadership and proven unsuccessful. Nevertheless, Mr. Hall stated, there was an important role for the Program in convening influential leaders from the franchise community, creating and disseminating information and training, advocating for ADR in franchising, publishing studies, and continuing its mission. He suggested that the group relieve itself of the pressure to raise money, and consider itself a “think-tank” for dispute management in the franchise community – a gathering of like-minded leaders. It could meet twice a year, in conjunction with some other event that attracts franchise leadership, and invite informative speakers, exchange developments, report on innovations, and grow to a larger group while maintaining a cross-section of the community, perhaps sustaining its own financial requirements by asking members to contribute $250 or so per year to meet the expenses of the administration of the program’s activities. He invited discussion of these ideas, which were re-emphasized and endorsed by co-chair Scott McLester.

Members strongly wanted the Program and the committee to continue, and many voiced the sense that the proposal did not constitute a change from the current mission and goals. The group agreed that it could contribute in an exciting and meaningful way without a requirement to raise substantial funds or identify a revenue stream; the prospect of a $250/year dues structure seemed acceptable. Linking meetings to major annual franchise events also seemed a correct approach, better than convenings for the committee only, located in New York City. The expense of attending such meetings far exceeded a proposed levy of nominal annual dues. Action plans and discussions could also occur in conference calls. Opening the committee to the participation of smaller companies was also an attractive possibility. It was noted that, in making outreach invitations, it was important to keep the focus on attorneys and not sales representatives. The group agreed that meeting in conjunction with the IFA convention or the ABA Form meetings would be ideal.

UPDATE OF CPR DEVELOPMENTS:

Mr. Phillips reported on the upcoming meetings in Boston and New York, stressing that CPR meetings are now open to nonmembers. Helena Tavares Erickson explained that CPR Panelists (i.e., listed arbitrators and mediators) are now being asked to contribute an administrative fee to defray the costs of posting and upkeep of the web site. This policy also applies to the Panel of Franchise Neutrals. Panelists who decline to make this contribution will be removed from the Franchise Panel. She also noted that the Franchise Panel is underrepresented in the South and encouraged all committee members to forward names of highly qualified candidates for inclusion in the CPR Panel. She reported that cases going through CPR have declined, indicating a maturing of the market and a willingness for disputants to select mediators and go through the process without the administrative assistance of the Program.

The group expressed some concern that mediators on the Franchise Panel may be dropped because they don’t get enough work directly through the Program to justify the financial contribution. It was noted that designation as a CPR Panelist has substantial credentialing impact but it was impossible to know its direct financial impact in marketing individual
mediators. There was also skepticism that mediators in major cases need to be drawn from the region in which a dispute arose. A member also reiterated concern that the Program’s imposing a fee for rendering administrative services in handling a case may inhibit use of the Program.

BOOK: STATUS, SCHEDULE, PUBLICATION: Mr. Phillips distributed copies of the recently edited book, “Managing Franchise Relationships Through Mediation.” After a review of each chapter, he stated that the volume was, in his view, of distinct and immediate usefulness to both business and legal participants in the industry. The outstanding questions were (a) in what form it should be published and (b) whether it should include an arbitration section for the use of disputants who are considering, or already contractually committed to, arbitration.

CPR estimated that the cost of self-publishing would be approximately $10,000 for 500 copies, including costs of design and formatting. The group discussed partnering with the IFA, AAHOA or some other leading trade organization to produce hard copies. An alternative was a “print-to-order” firm such as Booksurge.com. Mr. Purvin will investigate the latter and Mr. Hall and Ms. Ainsely will discuss a possible joint venture with the IFA.

GUEST SPEAKER: Edna Sussman, a New-York based mediator and member of the Program’s Franchise Panel, joined the group for remarks over lunch. She reported on the status of the European Directive on mediation, to which CPR had made contributions when the legislation was in the draft stage. She also reported on legislation in Congress seeking to limit, and in some instances (such as employment and franchising) ban, contracts requiring arbitration of disputes. Other topics addresses were the enforceability of agreements resulting from mediation; the enforcement of agreements to mediate; and insights on breaking impasse in mediation, particularly those caused by attorney misbehavior and obstruction. The committee thanked her for her excellent presentation.

ARBITRATION: Mr. Phillips distributed a draft Franchise Arbitration Rules for the committee’s consideration. These Rules were the product of comments and contributions made by a sub-committee established at the last meeting. John Dienelt voiced his concerns about the process in toto. Mr. Phillips pointed out certain aspects of the proposed Rules that address chronic frustrations or perceived flaws in the arbitration process as currently conducted.

The committee was unclear whether adoption by the Program of franchise-oriented Arbitration Rules would diffuse its mission and message about the benefits of mediation. It was generally agreed that the Program could adopt and endorse such Rules without doing violence to its mission, providing a “one-stop shopping” resource for those charged with designing dispute resolution procedures in franchise agreements. Mr. Schwartz said that AAHOA would need to review the Rules before determining if adoption were in the interests of his members. It would be useful only if included in franchisor contracts, and there was a question how many would want to do so. (Wyndham, for example, does not use arbitration.) To appeal to franchisor lawyers some other resources may be needed, such as a comparison chart of these Rules against others and some discussion in media such as the ABA Forum. The Rules will be reviewed and the discussion continued at the next meeting.
The group will aim to meet again in connection with the IFA convention, which will be held February 9-12, 2008, in Orlando, Florida. The meeting adjourned at 2:15 p.m.

Respectfully Submitted,

F. Peter Phillips
Secretary