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CORPORATIONS WILL CARRY THE BOTTOM LINE TORCH AND IGNITE THE DIVERSITY FIRE IN THE ADR PROFESSION.

By Elizabeth A. Moreno, Esq.

Diversity happens when it has a positive impact on the bottom line. This was the overall consensus of representative corporations, law firms and Alternative Dispute Resolution (ADR) providers at the April 5, 2006 ABA Dispute Resolution Diversity Forum held in Atlanta. The purpose of the Diversity Forum was to address ways in which the ADR profession can become more inclusive to minority and woman neutrals.

The corporate panel, who was represented by corporate counsel from Cingular Wireless and T-Mobile and employee internal dispute resolution directors from Coca Cola Enterprises and Shell, agreed that awareness needs to be raised and that the profession needs to become more diverse. The lack of diversity is problematic in the employment arena. Corporations are finding that mediation is losing its effectiveness and they are losing their credibility with employees when they can only offer a homogenous group of neutrals to resolve workplace disputes. Corporations have an immediate need for Diverse ADR neutrals and the national ADR providers they use are not delivering a diverse panel.

Shell, which has an employee internal dispute resolution program 'RESOLVE', is not comfortable with just raising awareness. Shell is taking affirmative steps to make sure that it can choose neutrals from a diverse ADR panel. Shell is committed to the economic development of minority and women owned suppliers and actively engages in efforts to provide for inclusion by partnering with certified firms. Several years ago, Shell Oil Company was one of the first corporations to carry the torch and ask its majority law firms to demonstrate a commitment to diversity. Many firms can attest to the fact that a failure to demonstrate a commitment to diversity would jeopardize their relationship with Shell. Once again Shell has come to the forefront by introducing supplier diversity to the ADR profession and announced that Shell will extend business opportunities to certified minority and women ADR neutrals. These efforts, coined as "second tier" allow Shell to influence prime or majority ADR firms, with whom they do business, to also contract with minority and women owned ADR firms within the business community. Shell's message is driven by contract language and sharing information on benefits of engaging a more representative group of suppliers. In the upcoming months Shell will be targeting prime firms that provide ADR services to participate in second tier efforts. Shell astutely recognizes that by embracing the concept of inclusion, the company will rise to a higher level, reflecting its belief that it "will benefit from diversity through better relationships with customers, suppliers, partners, employees, government and other stakeholders, with positive impact on the bottom line."

Representative Law firms agreed that law firm Diversity initiatives did not gain any momentum until corporations made demands that law firms commit to diversity or

they would lose the corporation as a client. Law firms were represented by Buckley King, Littler Mendelson, Paul Hastings, and Powell Goldstein, who agreed that diversity in the ADR profession needs to take place, but that it is the economic motivation that will move Diversity forward in the ADR profession. If corporations make demands that law firms use ADR providers that are diverse in mediating or arbitrating their cases, or risk losing business, they will use diverse ADR panels. The representative Atlanta law firms are beginning to look at the utilization of diverse ADR providers more seriously after law firms heard similar representations at the Atlanta Legal Diversity Conference in July 2005. At that conference, Wal-Mart announced that its law firms must embrace diversity at all levels, including its vendors and must demonstrate that there are substantive numbers of women and minority lawyers in the upper level of their firms. If not, its relationship with the firms will be terminated. Representatives from Visa International, Del Monte, Pitney Bowes and Cox Communications made similar representations. These diversity demands came on the heels of Sara Lee's 'call to action' letter in 2004, signed by more than 100 general counsel, indicating that they would consider a firm's diversity when hiring outside counsel.

What did the representative national ADR providers, National Arbitration Forum (NAF), Resolute Systems, Inc. (RSI) and National Association Securities Dealers (NASD), have to say after hearing the corporate and law firm panels? The representative ADR providers were aware of the issues and were taking steps to diversify their panel of neutrals. However, they confirmed that demands will cause them to step up their efforts in order to avoid a blow to their bottom line. NASD and RSI already have a statement on their web site that they are committed to diversity and that they carefully select from a broad cross-section of people, diverse in culture, profession, and background. NAF will place a similar statement on its web site. The representative providers have been actively recruiting diverse neutrals through networking at Diversity functions and with minority organizations, and by sponsoring or presenting training sessions for ADR minority professionals.

Unless it affects the bottom line, entities will not be motivated to move forward and embrace diversity. Now that corporations are beginning to make noises and demands about utilization of diverse ADR panels, law firms and ADR providers are beginning to realize that corporate demands may affect their relationship with that corporation in the future and ultimately, their bottom line. Shell Oil has taken the step to carry the bottom line torch which will ignite the Diversity fire in the ADR profession.

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