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**COMMENTARY**

GETTING REAL ABOUT DIVERSITY

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BigLaw has been slow on improving diversity; top law firms will not even be close to mirroring law school classes until 2057 (for gender diversity) and 2084 (for racial diversity).<sup>1</sup> To address this issue, five firms will work with Diversity Lab, through its Move the Needle Fund (“MTN”), on incorporating experimental methods based on research and data.<sup>2</sup> These new methods will target various aspects of work including hiring, promotions, performance reviews, compensation systems, work allocation, work/life integration, and sponsorship.<sup>3</sup> The firms will invest \$5 million over the course of five years and report their results to the public.<sup>4</sup> MTN will assess inclusion research, such as the ABA’s and Minority Corporate Counsel Association’s study on bias<sup>5</sup> and carry out winning ideas from the Diversity in Law Hackathon.

Disconcerting diversity numbers have been pushing BigLaw clients, and their legal spend, towards other firms, specifically those that are minority- and women-owned.<sup>6</sup> Several Fortune 500 companies have partnered with the National Association of Minority and Women Owned Law Firms<sup>7</sup>, along with other like-minded organizations, in an effort to receive quality work from law

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<sup>1</sup> Emma Cueto, *GCs Unveil \$5M Plan for BigLaw Diversity ‘Laboratories’*, LAW360 (Sept. 20, 2019, 5:23 PM), [www.law360.com/articles/1201314](http://www.law360.com/articles/1201314).

<sup>2</sup> MOVE THE NEEDLE FUND, [www.Mtnfund2025.com](http://www.Mtnfund2025.com) (last visited Oct. 6, 2019). Four firms have already committed to MTN: Eversheds Sutherland (US), Goodwin, Orrick, and Stoel Rives. MTN’s application deadline for the fifth firm is October 25, 2019.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> ABA and MCCA, *You Can’t Change What You Can’t See Executive Summary*, (Oct. 6, 2019, 5:00 PM), <https://www.mcca.com/wp-content/uploads/2018/09/You-Cant-Change-What-You-Cant-See-Executive-Summary.pdf> [<https://perma.cc/ZT7T-DR5T>]

<sup>6</sup> Dylan Jackson, *Frustrated With Big Law Diversity, Many Companies Are Looking Elsewhere*, THE AMERICAN LAWYER, (June 3, 2019, 3:40 PM), <https://www.law.com/americanlawyer/2019/06/03/frustrated-with-big-law-diversity-many-companies-are-looking-elsewhere/?sreturn=20190906014956>.

<sup>7</sup> *Id.*

firms that better mirror their own diversity and inclusion goals.<sup>8</sup> Earlier this year, over 170 general counsel and corporate legal officers endorsed an open letter essentially providing an ultimatum—law firms need to invest in diversity or their bottom lines will be negatively impacted.<sup>9</sup> The legal officers that signed the open letter no longer want lip service on how law firms can try to do better; they want real results and for law firms to truly commit themselves to promoting women and other diverse attorneys.<sup>10</sup>

Law firms can also look beyond the legal community to see why diversity is so important. Research shows that companies have a higher likelihood of having financial returns above national industry medians if they are in the top quartile for racial and ethnic or gender diversity.<sup>11</sup> Additionally, “when employees ‘think their organization is committed to and supportive of diversity, and they feel included,’ their ability to innovate increases by 83%.”<sup>12</sup> Although diversity also helps attract and retain top talent; law firms should incorporate practices that promote an inclusive environment.<sup>13</sup> BigLaw should be especially wary of retention as the law firm turnover rate is roughly 10 times the turnover rate at Fortune 100 companies.<sup>14</sup>

Notably, the D&I Dashboard, which will be released in 2020. Details regarding goals, diversity initiatives, and progress will be accessible to the legal community and others.<sup>15</sup> The D&I Dash won first place in the Spring 2018 Diversity in Law Hackathon and is a great example of how MTN will be incorporating pragmatic ideas that aim to solve the lack of diversity in BigLaw.<sup>16</sup>

As an initial step, your firm can begin integrating other solutions generated by Hackathon teams, such as the In.C tracker, which tracks and provides feedback on inclusive behaviors through the Waggl survey tool or Opp Shop, which makes the work assignment process more transparent.<sup>17</sup> Other Hackathon crowd favorite ideas include giving at least one of your firm’s female or minority lawyers a Client Relationship Lawyer position, making the leadership promotion process more transparent along with using an annual review process, and creating cohorts—based on common interests—of lawyers from different levels, cultures, and practices.<sup>18</sup> Your firm can also adopt the Mansfield Rule, which requires participating law firms to consider at least 30% of diverse attorneys for diverse spots and participating legal counsel to consider at least 50%.<sup>19</sup> The legal

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<sup>8</sup> Michele Gorman, *15 Minutes With Chobani’s General Counsel*, LAW360, (Sept. 23, 2019, 2:04 PM), <https://www.law360.com/articles/1196767/15-minutes-with-chobani-s-general-counsel>.

<sup>9</sup> Jackson, *supra* note 6.

<sup>10</sup> *Id.*

<sup>11</sup> Vivian Hunt, Dennis Layton & Sara Prince, *Why diversity matters*, McKinsey, (Jan. 2015), <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>. “Companies in the top quartile for racial and ethnic diversity are 35% more likely to have financial returns above their respective national industry medians. Companies in the top quartile for gender diversity are 15% more likely to have financial returns above their respective national industry medians.”

<sup>12</sup> *Id.*

<sup>13</sup> Janel Martinez, *Why Should Companies Prioritize Diversity?*, GREENHOUSE, (Feb. 9, 2017), <http://www.greenhouse.io/blog/why-should-companies-prioritize-diversity>.

<sup>14</sup> David Dorian, *Lawyers Quitting Big Law Firms In Droves: Why Lawyers Are Quitting BigLaw*, LAW CROSSING, <https://www.lawcrossing.com/article/pdf/900049717.pdf> (last visited Oct. 6, 2019). Fortune 100 companies have a turnover rate of 2-3%.

<sup>15</sup> MOVE THE NEEDLE FUND, *supra* note 2.

<sup>16</sup> DIVERSITY IN LAW HACKATHON SPRING 2018, (last modified 2018), <https://diversitylab.app.box.com/s/84wlhv57r98gwykmd65tiktad2y411>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Amanda James, *In The March Toward Parity, Law Firms Fall Behind*, LAW360, (May 28, 2019, 8:05 PM), <https://www.law360.com/articles/1163185>; *New Take on ‘Mansfield Rule’ Sets In-House Diversity Goals*, THE

officers who signed the open letter to law firms want results, and as Kathy Leo, Chobani's Chief Legal Officer and General Counsel, says, “[h]aving a social conscience makes good business sense.”<sup>20</sup>

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AMERICAN LAWYER, (April 4, 2019) <https://advance.lexis.com/api/permalink/5388c71e-aadf-4c55-87ba-0775c21f9385/?context=1000516>; Kathryn Rubino, *The Jabot: Diversity on Big Firms with Lynnette D. Espy-Williams – Episode 19*, (June 13, 2019, 3:43 PM), <https://abovethelaw.com/2019/06/how-do-you-get-biglaw-firms-to-care-about-diversity/> (discussing diversity problems in BigLaw and the Mansfield Rule).

<sup>20</sup> Gorman, *supra* note 8.