

GRSM Professional Liability Webinar Series

Diversity, Equity, & Inclusion Initiatives and Their Impact on Claims Handling

Melissa J. Brown, Esquire
Michael V. Slivjak, Esquire
Kathryn T. Siegeltuch, Esquire
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GORDON REES SCULLY MANSUKHANI
YOUR 50 STATE LAW FIRM™

Evolution of DEI Initiatives

Defining DEI (“Diversity, Equity, & Inclusion”)

- Diversity: The practice of including the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of people, including underserved communities.



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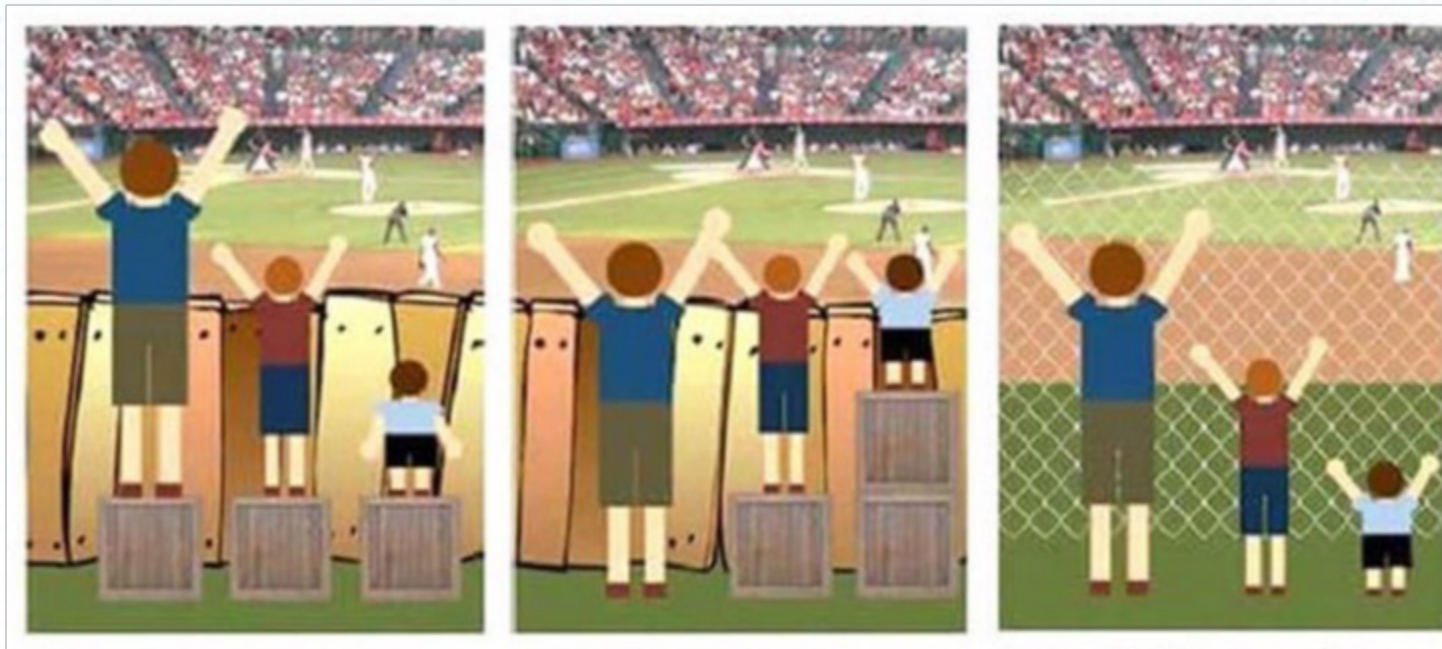
Defining DEI (“Diversity, Equity, & Inclusion”)

- Categories of Diversity:
 - Race
 - Nationality & Ethnicity
 - Age
 - Gender Identity
 - Sexual Orientation
 - Religion
 - Education Level
 - Physical & Mental
- Ability/Disability
 - Military/Veteran Status
 - Employment Status
 - Socioeconomic Background



Defining DEI (“Diversity, Equity, & Inclusion”) (continued)

- Equity: The consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment



Defining DEI (“Diversity, Equity, & Inclusion”) (continued)

- Inclusion: The recognition, appreciation, and use of the talents and skills of people of all backgrounds.



- Belonging: Inclusion is not an accidental process. Time and attention and openness/empathy are required to understand the differences between people, before their unique talents and skills can be truly recognized, appreciated, and utilized.

What are DEI Initiatives?



Mission

Adopting Mission Statement or Statement of Purpose



Implementation

**Diversity Statements
Unconscious Bias Training
Interventions
Professional Accreditation**



Results

**Monitoring Outcomes
Metrics and Data Analysis
Accepting Feedback**

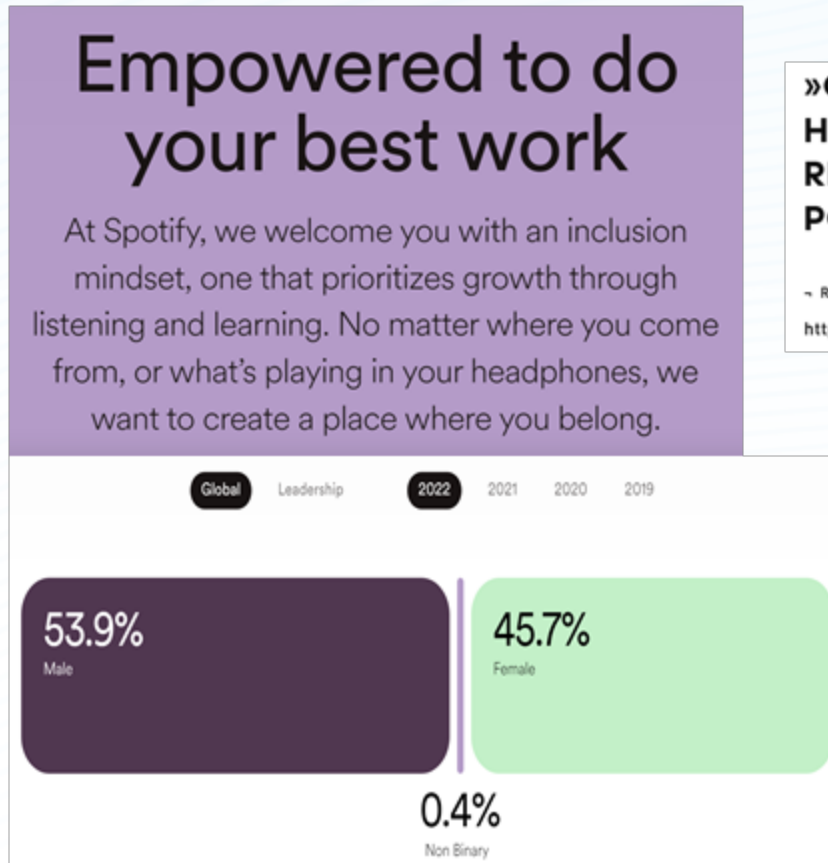
Mission Statements

- ABA: Why is Diversity important?
 - It strengthens the rule of law as the inclusion of people from diverse backgrounds leads to more trust in our structures of justice.
 - It increases respect for the legal profession as diverse communities can better identify and interact with a profession and legal systems that represent them.
 - It builds confidence within the legal community that diverse opinions, thoughts, and proposals are respected, which in turn encourages engagement and participation as people feel that their perspectives, beliefs, and perceptions are valued.
 - It makes good business sense . . . as lawyers from diverse backgrounds better reflect and can attract the diversity of citizens, clients, and customers from around the globe . . . [and] diverse legal profession has demonstrated the ability to be more just and productive because diversity, both cognitive and cultural, often leads to better questions, analyses, solutions, and processes.



Diversity Statements

- Consistent with the Mission Statement.
- Opportunity to incorporate data, illustrate successes, and provide access to resources.



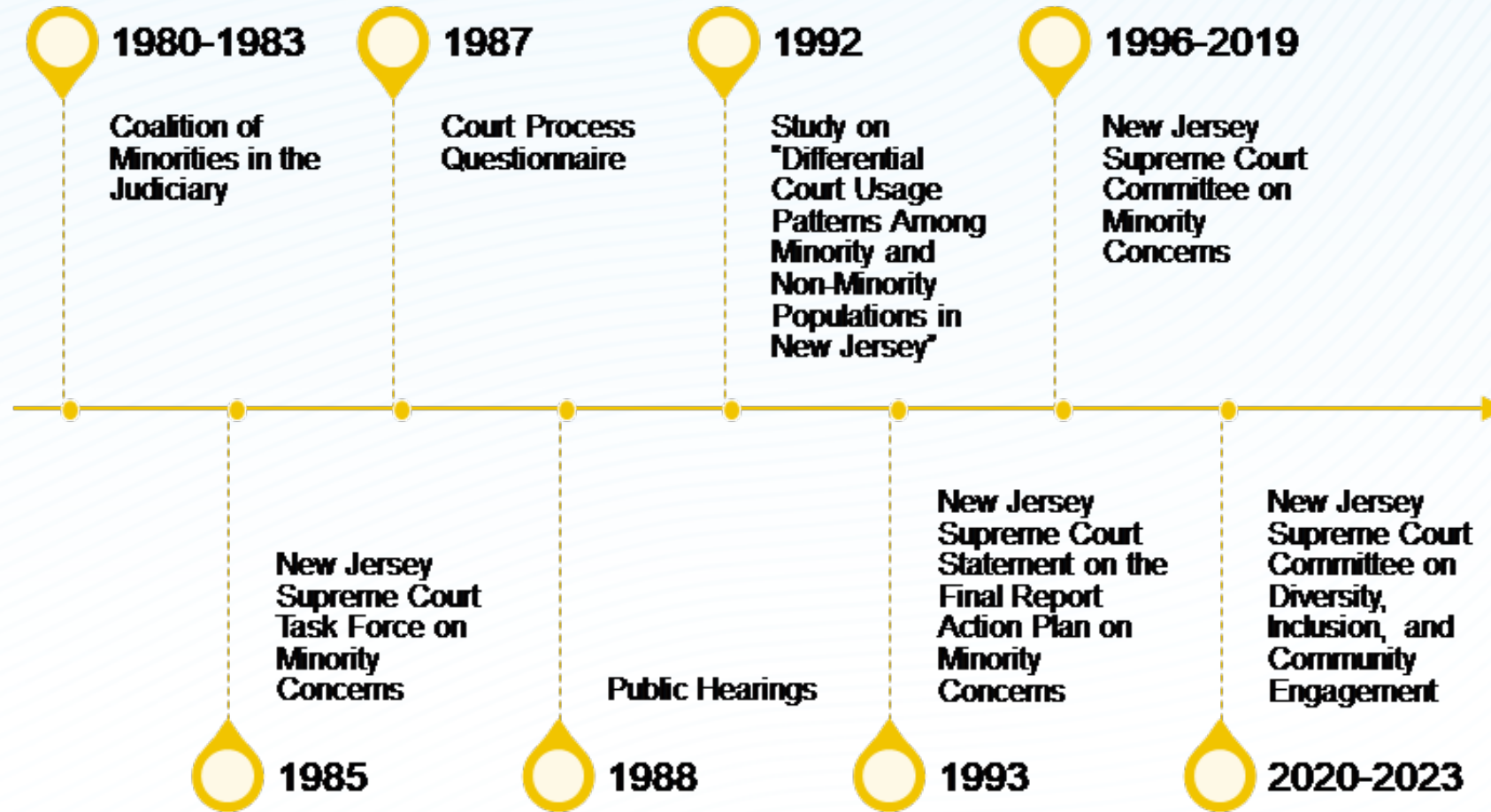
»COMPANIES LIKE ADIDAS DON'T JUST HAVE A PLATFORM: WE HAVE A RESPONSIBILITY TO INFLUENCE POSITIVE CHANGE.«

~ ROBBIE ROGERS, ATHLETE

<https://www.gameplan-a.com/2017/11/in-ou...>



Evolution



Implementation

- Unconscious Bias Training - A program designed to raise awareness of implicit biases and provide tools for addressing them. The goal is to reduce discriminatory behaviors and attitudes.
- Assessments/Surveys
- "Blind" Recruiting/Hiring - Organizations using blind hiring policies single out information conveyed in job application materials like resumes and application forms that is irrelevant to the job but could cue unconscious biases in managers. They then strip that information from materials before they are reviewed.
- Affinity Groups/Employee Resource Groups - An affinity group or employee resource group (ERG) is a collection of individuals who share a common identity characteristic, usually something that's traditionally underrepresented and can make the people in that group feel isolated.
- Executive Positions
- Mentoring Programs
- Leadership Acceleration/Re-Entry Programs
- Scholarships
- Podcasts?



State Survey on Attorney CLE Requirements

States that Require Completion of DEI Coursework in Reporting Cycle	States with no DEI Coursework Requirement	States with Proposed DEI Coursework Requirements
California Colorado Illinois Maine Minnesota Missouri New Jersey New York Oregon Vermont Washington	Alabama Alaska Arizona Arkansas Connecticut Delaware Florida Georgia Hawai Idaho Iowa Indiana Kansas Kentucky Louisiana Maryland Massachusetts Michigan Mississippi	Montana Nebraska Nevada New Hampshire New Mexico North Dakota Ohio Oklahoma Rhode Island South Carolina South Dakota Tennessee Texas Utah Virginia West Virginia Wisconsin Wyoming
		Pennsylvania North Carolina



Criticisms

- D&I vs. DEI and Equity vs. Equality
- Titles vs. Interventions
- Rainbow & Pink Washing
 - When companies signal support for the LGBTQ+ community, like adding rainbow colors to their marketing materials during Pride Month, without actually doing substantive work that helps members in the community.



DEI in 2023

Impact of Recent Social Changes on Business Sector Today



Pressure from politicians, activists, and interest groups on boardrooms and organizational leadership following emergence of #MeToo and #BlackLivesMatter movements



As of 2021, more than eight in 10 (or 83%) U.S. organizations were in the process of implementing diversity, equity and inclusion initiatives



As of at least July 2022, all Fortune 100 companies had made a public commitment to diversity, equity and inclusion

Characteristics of Effective Initiatives

- Intentionality
- Fostering pipelines of diverse professionals
- Tying compensation and performance evaluations for leaders and management to objective metrics



Examples



Industry Spotlight - Insurance

- Racial/Ethnic Diversity in Insurance
 - In 2021, 30.5% of all employees at the participating insurers were people of color
 - 16.2% of executive-level employees were people of color; about 7% were Asian, 4.6% were Black, and 3.1% were Hispanic or Latino
 - At the board level, only 22.3% identified as people of color
- Woman in Insurance
 - Women comprised 54.6% of the overall workforce at the largest U.S. insurers in 2021.
 - 77.2% of administrative support employees identified as women compared to 33.5% at the executive level and 28.5% at the board level.



Trends in DEI Related Claims

- Mullen v. Wells Fargo Bank NA, 2021 WL 4453604 (E.D. Pa. Sept. 19, 2021)
 - Eastern District of Pennsylvania Court concluded a former business acquisitions manager could not prove that a bank's gender diversity policy resulted in his selection for termination over a woman who held the same position.



Trends in DEI Related Claims (continued)

- On June 12, 2023, a NJ federal jury awarded more than \$25 million to Shannon Phillips, who was terminated from her position at Starbucks following a viral incident on April 12, 2018 related to the arrests of two Black men at a Philadelphia Starbucks location.
- Phillips sued Starbucks in 2019 alleging she was fired from her position overseeing around 100 stores in the greater Philly area because she was Caucasian in violation of Title VII of the Civil Rights Act and the New Jersey Law Against Discrimination.
- **This case may foreshadow an emergence of reverse discrimination claims by leaders in organizations.**



Trends in DEI Related Claims (continued)

- On June 29, 2023, in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, the Supreme Court struck down race-conscious admissions in higher education.



- While the decision is nominally limited to college admissions, recent reporting indicates law firms, in anticipation of forthcoming lawsuits, are advising employers to review their diversity policies to ensure they are facially neutral and comply with current state and federal laws.

Trends in DEI Related Claims (continued)

- American Alliance for Equal Rights v. Fearless Fund (filed August 2, 2023)
 - Alleges an Atlanta venture capital firm's grant program for Black woman business owners is racially discriminatory in violation of Section 1981 of the Civil Rights Act of 1866.



DEI in Claims Handling & Litigation

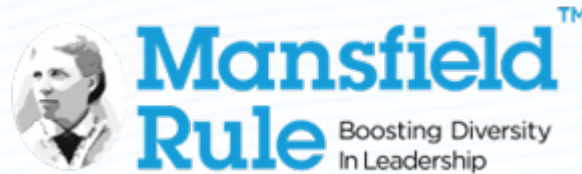
Impact on Claims Professionals & Assessment of Claims

- Internal DEI Training
- Communications with Insureds
- Valuation



Impact on Lawyers & Litigation

- Selection of Counsel
 - Orgs and their general counsels are now looking at diversity of firms in selection of outside counsel.
 - Mansfield Rule
 - » Self-reporting



- *For the Defense*, “Diversity Begets Diversity,” September 2022
 - Hiring:
 - » (1) Smart
 - » (2) Work Hard
 - » (3) Shared Values

Impact on Lawyers & Litigation (continued)

- Investigation and Surveillance
 - Expanding scope of discovery requests based on background of Plaintiff
 - » Ex:
 - The right PI
 - WhatsApp communications from plaintiffs who have family members in Southeast Asia and East Asian countries
 - Social Media



Impact on Lawyers & Litigation (continued)

- Alternative Dispute Resolution
 - Diversity of mediator
 - Socioeconomic status of Plaintiff



Impact on Lawyers & Litigation (continued)

- Venue and Jury Pool
 - Researching population of county where case is venued to evaluate likely jury pool and potential impact on insured's liability position at trial
 - » Burlington v. Middlesex Counties
 - » Camden County – 450 person voir dire



Impact on Lawyers & Litigation (continued)

- Trial
 - Millennials and Gen Z Jurors
 - Diverse juries 10% less likely to find liability. Sommers, S.R., [Journal of Personality and Social Psychology](#).



Conclusion

- DEI initiatives have a positive impact on all aspects of litigation, from the initial assessment by the claims professional through trial work by defense counsel.



Questions?



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