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Banking on Diversity: Diversity and Inclusion as Profit Drivers—The Business Case for Diversity

The data is in, and it's unassailable: Diversity and inclusion are enormously profitable.

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The data is in and it's unassailable: diversity and inclusion are enormously profitable. Supposedly, the business case for diversity is weak. It's mainly "wishful thinking." That's what the Chicago-based Institute for Inclusion in the Legal Profession (IILP) concluded in its 2011 report "The Business Case for Diversity: Reality or Wishful Thinking?" The IILP's review of data was so comprehensive, the study was widely accepted as definitive. There's just one problem: the report never actually took a direct look at whether diversity is profitable.

The IILP considered a number of factors: whether corporate law departments incentivize law firm diversity; whether corporations disengage from law firms that fail diversity standards; whether corporate clients ask about law firms' performance in becoming diverse; and how many lawyers are told they received business as a result of their firm's diversity. These are all important issues, but they don't directly speak to the profitability of diversity. If you want to know whether one product is more profitable than others, you could ask consumers whether they will buy it, but that won't answer the question. You could ask them whether they will stop going to stores that don't sell it, but that won't answer the question, either. You need to look at customer, revenue, and profit numbers.

The same is true for the business case for diversity. The issue is whether diversity is more, less, or equally profitable than less diverse business models. Specifically, the issue is whether it is more profitable for law firms to have diverse leaders—people who look more like the composition of the legal community in terms of their gender, race, religion, sexual orientation, nationality, age, disability, and other metrics—or whether law firms with more homogeneous leaders are more profitable. You can't find out from asking in-house counsel whether they seek out diverse law firms. You have to look at which companies are more profitable.

Moving Past Assumptions: Diverse Companies Outperform Their Homogeneous Counterparts

Having Women at the Top Pays

A number of recent business studies including a 2011 research report in *Catalyst, Inc.* by Nancy M. Carter and Harvey M. Wagner entitled "The Bottom Line: Corporate Performance and Women's Representation on Boards (2004–2008)," looked at the financial returns of companies with three or more women on the board. The findings are astounding. Those companies outperform companies with all-male boards by 60 percent in return on invested capital, 84 percent in return on sales, and 60 percent in return on equity. These numbers suggest that diversity and inclusion are not just profitable; they have a *synergistic* impact on profits.

Compare the Fortune 500 companies with the most women on their boards with those with the least. The companies with the most outperformed those with the least by 66 percent in return on invested capital, 42 percent in return on sales, and 53 percent in return on equity. Firms with few to no women at the helm should take stock of the enormous economic advantage had by their competitors with more women in charge.

You can see it looking at Fortune 500 companies. The positive influence of female board members is so strong that as the percentage of women board members of Fortune 100–500 companies drop, so does the success of the companies, according to the *Catalyst, Inc.* report "2010 Catalyst Census:

Fortune 500 Women Executive Officers and Top Earners." Of the most successful U.S. companies, the top Fortune 100 companies, women represent 18 percent (nearly one in five) board members. *Catalyst* found that as you move from Fortune 100 companies to their slightly less successful Fortune 200 counterparts, the number of women on the board decreases to 16.7 percent. Fortune 300 companies have slightly fewer women on the board, 14.9 percent, and so on down to Fortune 500 companies. Fewer women in leadership equates with less financial success.

This squares with what Jack Zenger and Joseph Folkman discussed in their 2012 article, "Are Women Better Leaders than Men?" in the *Harvard Business Review*. Looking at a 2011 study of 7,280 leaders in which 16 competencies that go into outstanding leadership were evaluated, Zenger and Folkman found "at all levels, women are rated higher in fully 12 of the 16 competencies" and that "the higher the level, the wider that gap grows." In fact, "two of the traits where women outscored men to the highest degree—taking initiative and driving for results—have long been thought of as particularly male strengths. [M]en outscored women significantly on only one management competence in this survey . . . ."

Forward-thinking companies as trailblazing as The Coca-Cola Company are paying attention. *Catalyst* reports in "The Coca-Cola Company—Global Women's Initiative: Women as the Real Drivers of the 21st Century" (2013), that Coca-Cola is engaged in enabling the economic empowerment of 5 million women entrepreneurs across its value chain by 2020.

Racial Diversity at the Top Pays, Too

Companies with greater racial diversity at the top leave their more homogeneous counterparts in the dust, too. According to research cited in a 2009 article, "Does Diversity Pay?: Race, Gender, and the Business Case for Diversity" by Cedric Herring in the *American Sociological Review*, on average, the most racially diverse companies bring in nearly 15 times more revenues than the least racially diverse. In fact, Herring found that for every percentage point increase in racial or gender diversity up to that represented in the relevant population, sales revenues increase approximately 9 and 3 percent, respectively. Again, the figures indicate that diversity and inclusion's impact on revenues is synergistic.

Racial diversity, Herring found, is a better determinant of sales revenue and customer numbers than company size, age, or number of employees at a worksite. Companies with the highest rates of racial diversity reported having on average 35,000 customers, whereas companies with the least racial diversity reported having only 22,700. According to Herring, companies that even only marginally increase their racial diversity gain an average of over 400 customers.

IBM and RBC: Examples of Diversity and Growth

Diversity and inclusion represent a competitive advantage, and you can measure their financial benefits just as IBM did. As a result of implementing a diversity task force initiative, IBM grew its female executives ranks by 370 percent, its ethnic minority executives ranks by 233 percent, and the number of self-identified gay, lesbian, bisexual, and transgender executives by 733 percent. As David A. Thomas wrote in "Diversity as Strategy" in the *Harvard Business Review* in 2004, the result was stunning:

> [T]he work of the women's task force and other constituencies led IBM to establish its Market Development organization, a group focused on growing the market of multicultural and women-owned businesses in the United States. . . . **In 2001, the organization's activities accounted for more than $300 million in revenue** compared with $10 million in 1998. Based on a recommendation from the people with disabilities task force, in October 2001 IBM launched an initiative focused on making all of its products more broadly accessible to take advantage of new legislation—an amendment to the federal Rehabilitation Act requiring that government agencies make accessibility a criterion for awarding federal contracts. IBM executives estimate this effort will produce **more than a billion dollars in revenue during the next five to 10 years**. . . .

(Emphasis supplied.)

Workforce diversity helped IBM attract a more diverse base of customers that included women and minority-owned businesses. As Thomas put it:

> IBM's efforts to develop the client base among women-owned businesses . . . quickly expanded to include a focus on Asian, black, Hispanic, mature (senior citizens), and Native American markets. The Market Development organization has grown revenue in the company's Small and Medium-Sized Business Sales and Marketing organization from $10 million in 1998 to hundreds of millions of dollars in 2003."

When IBM became more diverse, its revenues skyrocketed.

RBC has likewise been focusing on creating a diverse and inclusive workforce. According to the January 30, 2014, article "Moving Past Diversity: RBC's Journey to Rid Its Upper Ranks of 'Unconscious Bias'" by Dan Ovsey in the *Financial Post*:

> Current CEO Gord Nixon—who will be retiring later this year—has made diversity of gender, culture, age and professional experience a priority for the bank, believing it to be good for business. **If RBC's track record is any indication, he's right. The bank has generated $58-billion in total profit during Mr. Nixon's 12-year tenure and saw its share price soar 164%.**

(Emphasis supplied.) RBC made diversity a company priority, and saw its share price go through the roof.

Diversity: The Potential for Much Higher Law Firm Profits

The benefits corporate America reaps from diversity apply to law firms. Douglas E. Brayley and Eric S. Nguyen, authors of "Good Business: A Market-Based Argument for Law Firm Diversity" in *The Journal of the Legal Profession* in 2009, studied the data from the 200 highest-grossing firms (the Am Law 200). Highly diverse law firms report, on average, much higher profits per partner and revenue per lawyer than the rest of the Am Law 200 firms.

Even controlling for hours, location, and firm size, the study's authors found that "differences in diversity are significantly correlated with differences in financial performance." In fact, according to the study, "a firm ranked in the top quarter in the diversity rankings will generate **more than $100,000 of additional profit per partner** than a peer firm of the same size in the same city, with the same hours and leverage but a diversity ranking in the bottom quarter of firms." (Emphasis supplied.)

The most diverse of the Am Law 200 firms could be far more diverse and inclusive than they currently are. The $100,000 per partner additional profit differential could presumably be even greater.

Money at law firms is not equally distributed among partners. Those at the top are paid far more than the partners below them. That means those in the highest positions of law firms, those in the best position to change the direction of their firms, have the greatest economic incentive to embrace diversity and inclusion. They stand to profit the most from them. To do so, they should not only recruit diverse talent, but retain it, engage it, promote it, and invite it to the management table.

The reason diversity works is that when a company's leadership becomes more diverse, far more changes than the fact the people in it become a melting pot microcosm of their community. Studies show the company performs better.

There may be a host of reasons why. Perhaps women and minorities see that they have a real opportunity for advancement and become more motivated to not only stay in the company, but invest themselves in its success.

Maybe when companies become more diverse, they are better able to solve problems and seize potential opportunities. There is data suggesting so. According to Scott E. Page, author of *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies*, on almost every measure, greater racially, ethnically, and culturally diverse workplace teams function more effectively than more homogenous teams. In fact, Page found diverse thinkers (defined as those with different educational backgrounds, experience levels, and/or racial, gender, and ethnic identities) are markedly better at solving problems than teams selected for their intellectual ability. The diverse team's collective intelligence, he found, is generally significantly greater than a team whose individual members are uniformly "smart." According to Deloitte, *Only Skin Deep? Re-examining the Business Case for Diversity* (Sept. 2011), the most

plausible explanation for these findings is that teams with members from diverse backgrounds, experiences, and perspectives avoid "groupthink," whereas nondiverse teams approach problems from the same angle.

This data suggests that diversity is not just good for profits. Diversity can enhance even nonprofit entities because it enhances group performance. In fact, diversity enhances profits in for-profit companies precisely because it enhances company performance.

Companies That Don't Diversify Face Greater Exposure

Diversity not only holds great potential to increase law firm profitability; openness to candidates from diverse backgrounds—for employment, raises, bonuses, equity, etc.—is essential to minimizing a law firm's exposure.

In December 2012, Sanford Heisler LLP announced that it was representing Francine Griesing, founder of Griesing Law LLC, in a discrimination suit against Greenberg Traurig LLP, where she had previously been a partner. Sanford Heisler had previously won a massive judgment against Novartis for gender discrimination. Ms. Griesing claimed that Greenberg Traurig officials denied her the compensation, promotions, and support that the firm gave to less-productive partners. Sanford Heisler sought class action certification for the 215 current and former female Greenberg Traurig partners who could join the lawsuit.

The lawsuit followed a multi-year investigation by the Equal Employment Opportunity Commission that concluded, according to a Sanford Heisler news release, that there is "reasonable cause to support class-wide claims of gender discrimination in compensation" and "reasonable cause to support claims that women are treated less favorably in the terms and conditions of their employment." The matter settled for an undisclosed amount in 2013.

Ms. Griesing's lawsuit should be a wake-up call to law firms engaging in discriminatory practices. Many law firms fall into that category. According to "A Current Glance at Women in the Law" (Feb. 2013) by the American Bar Association Commission on Women in the Profession, one-third of lawyers are women (33.3 percent). However, according to the National Association of Women Lawyers (NAWL®) and The NAWL Foundation's® "Report of the Eighth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms" (Feb. 2014), only 17 percent of equity partners are women, and many of those equity partners are being paid between 85 and 89 percent of what their male peers are.

In "Compensation in Law Firms: Why Women Equity Partners Are Compensated Less for the Same Billable Hours and Business Origination as Male Equity Partners," Harry Keshet, PhD. and Angela A. Meyer, PhD., PE reported on the results of their groundbreaking attorney compensation study of 1,729 lawyers. They found:

> **[C]ompensation is gender based** with male equity partners receiving more compensation than women equity partners do. **This fact is true when women and male equity partners bill the same number of hours, generate the same levels of origination, have the same level of law firm tenure and work in the same size of law firms**.

(Emphasis supplied.) The fact that women in the profession are not being paid the same as men and are not being equally credited for the business they generate isn't because they're not putting in as many hours, have less business, or are more junior. Women lawyers are compensated less even when they bill the same number of hours, have the same amount of business, and are equally tenured.

In fact, Sky Analytics' comprehensive "White Paper / Gender Study" of $3.4 billion of legal spending shows that the hourly billing rate for female attorneys is significantly lower than that of male attorneys from the start of their careers, and that where male and female lawyers bill the same number of hours to complete a task and bill the same amount of hours per day, female associates' work is more often discounted than male associates' work. Not only are female attorneys underpaid, their work product is undervalued by their firms. As a result of this discounting of their work, women lawyers have to bill more hours to generate the same amount of revenues as male lawyers.

Minority lawyers are not being treated fairly, either. In the piece "Representation of Women Associates Falls for Fourth Straight Year as Minority Associates Continue to Make Gains—Women and Minority Partners

Continue to Make Small Gains" (Dec. 2013), NALP reported that minorities accounted in 2013 for 7.1 percent of the partners in the nation's major firms, whereas as of 2013, minorities made up 13.36 percent of the lawyers—nearly double the number of lawyers—at those firms.

On average, law firms are failing to promote women and minorities to partnership in representative numbers, law firms are underpaying those that are partners relative to their white, nondiverse male counterparts, and law firms are discounting the work of women lawyers who are just as productive as men, causing women lawyers to have to work longer hours to generate the same revenues.

I minimize companies' exposure to employment and general liability matters for a living. A great way companies can lower their exposure and increase their retention of women and minority lawyers is by implementing practices to correct these discrepancies.
RBC Chief Human Resources Officer, Zabeen Hirji, is quoted as saying in the 2014 "Moving Past Diversity" *Financial Post* piece, "If you start with the belief that men and women and people from different backgrounds have come in with the same experience, skills, education and we've given them the same opportunities, they're going to be equally qualified . . ." This thinking applies to law firms. If women and minorities come into law firms with comparable educational backgrounds, skills, and experience—and there is no data to suggest otherwise—and are given comparable opportunities, they are equally qualified as well. If they are not advancing at the same rate as white, nondiverse male lawyers, and/or are being paid less, then they are not being given comparable opportunities and/or are not being fairly and equally evaluated, promoted, and compensated.

To correct this, law firms need to put representative numbers of women and minorities on their compensation committees and in governance and other leadership positions. If 30 percent of a firm's attorneys are women, 30 percent of the members of its compensation committee and other leaders should be. Likewise, if 15 percent of a firm's attorneys are minorities, 15 percent of its compensation committee members and other leaders should be.

Law firms should conduct internal audits of their hiring, pay, evaluations, and promotions as part of a comprehensive program to identify and minimize gender and minority bias. They should check how assignments, networking opportunities, and client development resources (including in dollars) are distributed along gender and minority lines among firm lawyers. Firms should institute flexible working arrangements to minimize the drain of talented female and minority lawyers. If a male lawyer is given funds for a golf outing to attract a client and a female lawyer seeks funds for a luncheon, show, wine tasting, or other outing to attract one, she should receive equal funding.

The call for these measures must come from the top. The fact diversity drives law firm profits and performance shows that those at the top should call for them. Increased performance will enhance a firm's brand in the marketplace. Given the huge positive financial impact diversity and inclusion can have, law firm partners should be required to take ownership of the impact of their actions on diversity. They should have to pay in dollars--out of their pockets--for the women and minorities under them who leave. Partners who better retain them should receive additional compensation. Such measures have the added effect of showing lawyers within the firm, as well as clients, the importance the firm places on diversity.

From corporate America to American law firms, the business case for diversity is overwhelming. Law firms that hold women and minorities back from their full potential not only expose themselves to liability, they prevent themselves from potentially multiplying their customer base and earning greatly increased profits. They lose out on the synergistic financial competitive advantage that diversity and inclusion represent.

Although the title and certain content within this piece has changed, it has been reprinted substantially in its original form. The original piece, "Disregard Diversity at Your Financial Peril: Diversity as a Competitive Financial Advantage," was published by the Minority Corporate Counsel Association in the May/June 2013 issue of Diversity & the Bar.

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