

Business *Doing* Justice

NLADA Mutual Insurance Company, RRG
Policy Brief

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ABOUT NLADA MUTUAL INSURANCE CO., RRG

NLADA Mutual is America's equal justice and insurance risk management firm. Founded as the NLADA Insurance Program by The National Legal Aid & Defender Association (NLADA) in 1994, NLADA Mutual is the only provider exclusively dedicated to equipping the equal justice community with the coverage they need to courageously and confidently advance justice for all. NLADA Mutual offers standard-setting insurance products tailored to client needs. It delivers risk management services and training grounded in a proactive evidence-based approach. It consistently advocates on the equal justice community's behalf within the insurance industry. To learn more, please visit www.nladamutual.com.

ABOUT THE AUTHOR

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Business *Doing* Justice

Background

In 2019, the National Legal Aid and Defender Association (NLADA) working with its Corporate Advisory Committee (CAC) launched a new initiative tied to the United Nations Sustainable Development Goal (SDG) 16 and its call to “ensure equal access to justice for all.” The initiative’s mandate was to identify more opportunities for the U.S. corporate community interested in advancing Goal 16 to strategically collaborate with NLADA and its members – civil legal aid offices, public defender offices, and clients across the country. This activity resulted in the publication of the [NLADA Policy Brief: Access to Justice is Good for Business](#) and launch of the [CAC’s Goal 16 Working Group](#), which identifies access to justice policy issues that can be advanced through public-private partnership as described in the [Goal 16 Working Group’s Toolkit: Business Advancing Justice](#).

While the activity of the working group has mainly explored policy reform through a business’ lobbying efforts with executive branch agencies or legislatures, advocacy before courts, and use of the bully pulpit to sway hearts and minds of policymakers and the public, businesses have increasingly been looking inward in determining what they can do to improve justice. The stakeholder capitalism movement, the rise of Environmental, Social, and Governance (ESG) activity, and the global justice for all movement shaped by Goal 16 means that opportunities for businesses to consider all stakeholders – not just shareholders – in their activities that impact justice have multiplied.

This paper prepared by NLADA’s business affiliate – NLADA Mutual Insurance Company, A Risk Retention Group (NLADA Mutual) – explores some of the ways businesses are doing just that. Propelled by the lifechanging events of the past few years – the pandemic, economic uncertainty, and the heightened awareness of racial injustice in the United States (and truly across the globe) – businesses have accelerated how they do justice.

Corporate Purpose, ESG, and Justice

In recent years, the business community has been reconsidering the traditional view of shareholder primacy (the primary corporate governance structure in existence in the United States) and whether pursuing business practices that prioritize profits justifies choices that create other costs or ignore other needs, including those of the very employees from whom profit is derived. What has emerged is the stakeholder model of corporate governance – one where all stakeholders, not just shareholders, are considered in business decisions. This model – also termed *stakeholder capitalism* – still focuses on profits, but also considers all of a company’s stakeholders in decisionmaking. Spurred on by organizations like the [B Lab](#), the movement around stakeholder capitalism has also resulted in businesses committing to this governance approach in their legal structure – generally known as benefit corporations. As more states have adopted benefit corporation legislation, consumers – especially younger ones – have been pushing businesses toward this space.

Indeed, in August 2019, The Business Roundtable released its [Statement on the Purpose of a Corporation](#), which clarified that while companies serve their own corporate purpose, they “share a fundamental commitment to all ... stakeholders [including customers, employees, communities where they work, suppliers, and shareholders] ... to deliver value to all of them” for the future success of their companies, their communities, and the country.



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In addition, as businesses dive deeper into their Environmental, Social, and Governance (ESG) engagement, the opportunity to examine justice and equity through the “S” and the “G” of that framework has increased. For example, business activity to counter the harms on the justice outcomes of individuals or communities that their operations might create (some examples of which are in the pages that follow) can be explored through the lens of the “S.” And activity to develop robust diversity, equity, and inclusion programs - including around the hiring of justice-impacted individuals (also described later in this brief) - can be explored through the “S” and the “G.”

At the same time as the corporate community has reevaluated purpose and begun to identify more ESG objectives, the global justice for all movement - shaped by the inclusion of access to justice in the SDGs - has created fresh opportunities for businesses to consider justice. Even so, among those businesses that track their implementation of the SDGs, they report low rates of implementation of Goal 16 specifically - leaving room for all to do more.

These developments and the numerous crises we have faced since 2020, have meant that calls for justice reverberates within and around the business community - with consumer and employee expectations remaining high. And as the most trusted institution in society, business has much to gain by delivering on those expectations.

Doing Justice

In the face of these demands, businesses have begun to examine - and in some instances change - how their products and services create disparities in society and the justice system. Whether or not intended, business practices can create harm to any number of its stakeholders. And while the debate continues around whether corporate social responsibility and ESG engagement are moral imperatives or simply altruistic, when products and services impact the delivery of equal access to justice, businesses must decide whether they will ***do justice***.

The examples that follow demonstrate just that - businesses choosing *justice* when engaging with their customers, employees, communities, suppliers, and shareholders.



Customers

User agreements

Eliminating mandatory arbitration for sexual assault and sexual harassment

survivors: In recent years – and before federal legislation mandated it – a number of companies evaluated how they address and respond to sexual assault and harassment claims brought by customers and employees and chose to end mandatory arbitration for survivors.

In March 2018, **Uber** removed mandatory arbitration requirements for individual sexual assault or sexual harassment claims by Uber riders, drivers, or employees. In announcing this new policy, Uber explained that all survivors would be “free to choose to resolve their claims in the venue they prefer: in a mediation where they can choose confidentiality; in arbitration, where they can choose to maintain their privacy while pursuing their case; or in open court.” It also ensured individual claimants could settle their claims with Uber without a confidentiality provision, which would prevent them from speaking about the facts of the sexual assault or harassment they suffered.

Lyft likewise agreed to remove confidentiality requirements and mandatory arbitration for sexual assault survivors – extending this policy to passengers, drivers, and Lyft employees.

Importantly, in March 2022, President Biden signed into law the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, which eliminated mandatory arbitration for such claims.

Products and services

Ending unfair targeting of underserved communities: Some businesses have also taken action to limit the ways in which their products might impede access to justice. For example, in May 2018, **Google** banned ads by bail bond services that targeted low-income individuals. In announcing the new policy to prohibit these ads, Google explained its decision stating,

Studies show that for-profit bail bond providers make most of their revenue from communities of color and low income neighborhoods when they are at their most vulnerable, including through opaque financing offers that can keep people in debt for months or years.



Employees

Hiring and other human resources practices

Pursuing second chance hiring: In recent years, many businesses have committed to improving their hiring practices so as to not unnecessarily filter out applicants with prior criminal convictions. Recognizing that qualified candidates were not advancing beyond the initial stage of the hiring process because they had “checked the box” on the job application asking whether they had been formerly convicted of a crime, businesses have implemented policies that “ban the box” (i.e., removed that question from the initial application). Businesses have further pledged not to inquire into prior criminal convictions until applicants have advanced beyond a certain stage. These activities have been championed by corporations like Ben & Jerry’s, which has participated in reform efforts in the state of Vermont. It has also translated into coalitions like the [Second Chance Business Coalition](#), which promotes the benefits of second chance employment.

Increasing diversity, equity, & inclusion in human resources practices:

While increasing diversity, equity, and inclusion is critical for employers to create fair places of work, including diverse perspectives in the room where business decisions are made [can also mean greater profits](#). Including individuals with different identities (such as race, ethnicity, gender, and sexual orientation) and different lived experiences (such as growing up in underprivileged communities or having family members who are justice involved) can ensure that as businesses innovate, they can better serve and attract customers from a variety of backgrounds. Efforts like [CEO Action for Diversity & Inclusion](#) help businesses take collective action to increase diversity, equity, and inclusion in their workforce, when it is set as an expectation from the top.

Employee contracts

Ending mandatory arbitration for sexual assault and sexual harassment survivors:

As described in the previous case study related to customers’ user agreements, a number of companies were also addressing how they respond to sexual assault and harassment claims brought by their employees. In December 2017, when evaluating federal legislation to end forced arbitration of sexual harassment claims, Microsoft announced it would waive any contractual requirement mandating that employees bring such claims to arbitration, choosing to make the change before any new law might require it. Critically, in March 2022, President Biden signed into law the [Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021](#), which eliminated mandatory arbitration for such claims.



Communities

Products and services

Ending the sale of products that exacerbate racial disparities in justice systems:

Facial recognition software has been the subject of criticism for many years for its potential to infringe on an individual's right to privacy and freedom of expression. In addition, [research](#) has shown that these tools may be less accurate for Black and Brown people and women based on bias built into the technology.

While developers of such software have acknowledged the need for federal regulations in the industry for a number of years (such as **Microsoft** in 2018), after the murder of George Floyd and the increased scrutiny of law enforcement practices that followed, the use of facial recognition software by police was called into question. In June 2020, **IBM** announced it was exiting the industry altogether while calling on Congress to develop regulations on the use of such technology. At the same time, **Amazon** and **Microsoft** announced that they were freezing the sale of facial recognition software to law enforcement, while renewing calls on Congress to develop regulations on their use. Two years later, Amazon and Microsoft [extended their moratorium indefinitely](#), even while Congressional action has yet to yield results.

Environmental impact

Cutting carbon footprint and recognizing how climate change impacts communities inequitably:

Environmental justice advocates have long identified the ways that environmental harms are borne predominantly by underserved communities, including BIPOC communities. From increased incidence of lead poisoning to placing landfills, garbage dumps, and other hazardous waste disposal sites in these communities, the harmful impacts on health that these choices made by governments and sometimes business can be severe.

To keep emissions down in the communities in which it works and distributes its good, **Guayakí Yerba Mate's** fleet is made up of over 50% electric vehicles.



Suppliers

Supply chain

Ceasing to do business with suppliers that use prison labor: Businesses that eliminate the use of goods in their supply chain produced by prison labor make an important step in countering injustice. While inmates value the opportunity to work and contribute to society – and prison vocation training programs can be an important aspect of rehabilitation and reentry programs, poor working conditions and the absence of fair wages must be considered when the private sector benefits from goods produced through prison labor.

The B Lab's [B Impact Assessment](#) provides a screening tool to encourage suppliers to adopt policies and practices for positive impact, including evaluating supply chains. And many businesses adopt supplier codes of conduct to ensure that they are partnering with companies that meet the same standards that they require in their own internal operations. For example, [Seventh Generation's](#) Code of Conduct extends to its manufacturers, suppliers, and distributors and prohibits them from using child labor and involuntary labor, among other practices.

Outside counsel

Incentivizing partners like outside counsel to increase diversity, equity, and inclusion in their own ranks: A business's ability to influence their partners can be profound. Such influence extends to outside legal counsel, where General Counsels can directly impact the diversity of the legal profession by requiring that the outside counsel's staffing reflect the values of diversity, equity, and inclusion. This can lead to greater understanding of the ways that the legal system does and does not work.

In 2019, 170 General Counsels [signed a letter](#) encouraging that their outside counsel increase diversity in their hiring practices and explained that they would prioritize their outside counsel arrangements with those that do. And in 2021, the Minority Corporate Counsel Association (MCCA) introduced its new [MCCA Diversity Scorecard](#) that helps legal departments and law firms understand, monitor, and measure diversity performance and progress.



Shareholders

ESG-based proxy voting

Supporting racial audits: Shareholder proposals are increasingly including ESG issues. While not always successful, the proposals can create important discussions in the boardroom. After the events of 2020, this has included increased focus on racial justice and racial equity. In fact, in 2022, more race-related shareholder proposals came in than in previous years, including proposals tied to racial equity audits, civil rights audits, and racial impact audits. In addition to the increase in number of shareholder proposals, 2022 also recorded higher approval rates for such proposals.

Board membership

Increasing diversity, equity, and inclusion efforts in recruiting candidates to serve on Board of Directors: Like increasing diversity among employees, recruiting diverse talent to serve as board members can positively impact a business. Varied perspectives coming from individuals of different backgrounds (such as race, ethnicity, gender, and sexual orientation) and different lived experiences (such as growing up in different communities and having family members who are justice-involved) means that when companies are making decisions that impact the communities that they serve, members of those communities are in the room.

While the majority of public company directors recognize the value of increasing diversity, diversity on boards remain elusive. But by increasing such diversity, businesses can make better choices that benefit all the stakeholders they serve – and can more quickly identify when those choices have unintended harmful consequences to the communities they serve. Diverse boards can be more equitable and make companies stronger.

What's Next

As business leaders consider whether to do more justice and align their operations with the push towards Environmental, Social, and Governance (ESG) engagement, in-house legal departments have found it necessary to balance the benefits of these activities against the legal risks that they might produce. Indeed, a [recent survey of General Counsels](#) conducted by Stanford's Rock Center for Corporate Governance found that, "General Counsel, on average, support ESG-related activities and at the same time harbor significant concerns for the legal and regulatory risk of these activities." And business activities that impact justice outcomes are particularly difficult to identify because they are not always apparent at first glance.

In its next phase of activity, NLADA Mutual will identify ways to help corporate America - especially members of the insurance industry - design policies and practices to advance justice and equity, while mitigating the risk in doing so. Building on NLADA's longstanding collaboration with the corporate community through its Corporate Advisory Committee and partnership around SDG 16 through [the Goal 16 Working Group](#), this new activity will help connect the NLADA community's expertise on justice and equity to those businesses seeking guidance on how they too can **do justice**.



