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COVER STORY

## Firms try to move 'inclusion riders' past the concept stage

By Steven Crighton

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Two weeks after actress Frances McDormand added the words "inclusion rider" to the national lexicon, firms are turning the concept into a reality.

Attorneys with Greenberg Glusker, LLP released Monday a proposed inclusion rider the firm intends to present to clients interested in attaching them to projects.

In summary, the template requires employers to make "good faith efforts" to interview and hire applicants who not only meet the qualifications for a position but also fall within a number of "qualified categories." Qualified categories include women, people of color, disabled people, and members of the LGBTQ community.

Bonnie Eskenazi, a partner at Greenberg Glusker, spearheaded the firm's effort. She said members of the firm's entertainment transactional, entertainment litigation and employment law practices collaborated to produce the inclusion rider "to cover all the bases" a client might need when implementing them.

Eskenazi said the proposal is a simple and straightforward template, adding that "more aggressive" language could be added to meet a particular client's needs for a project. One option would be a monitoring system by which producers would be required to report application and interview statistics to the contracting party to ensure requirements are met. Producers found to have failed to comply with an inclusion rider could be required to donate a certain percentage of the film or show's budget to a charity.

Greenberg's inclusion rider also notes that in no event should an employer hire any person "simply because they fall within the quali-



Daily Journal photo

Bonnie Eskenazi and the team at Greenberg Glusker LLP have put together a proposed "inclusion rider" they want to present to clients in the entertainment industry.

fied categories," nor should they fail to consider a person who does not fall within the qualified categories.

Eskenazi said the language was important because the goal of inclusion riders is to get Hollywood to promote the diverse talent base it already has, not put anyone out of work.

"It's not an attempt to discriminate against anyone. It's the opposite. It's an attempt to at least conceptually recognize that films are creative, collaborative efforts and need to be inclusive of different points of view," Eskenazi said.

Cohen Milstein Sellers & Toll PLLC also went public with their own pitch Monday, co-authored by some of the concept's creators, including Cohen Milstein partner Kalpana Kotagal, and Stacy L. Smith and Leah Fischman of University of Southern California Annenberg School for Communication and Journalism.

Fanshen Cox DiGiovanni, an actor-producer at Pearl Street Films

who announced last week that inclusion riders would be included in her company's future projects, also co-authored Cohen Milstein's template.

The group's template similarly requires employers to make "all reasonable efforts" to fill positions with underrepresented groups in films. Rather than an option to be added depending on the client, Cohen Milstein's rider requires statistics be reported to a third party.

If the third party determines that an employer has failed to comply in good faith, the studio would be required to make a charitable contribution, though the amount to be donated would be determined on a per-case basis.

In DiGiovanni's example template, Smith is the designated third party, and the contribution would be donated to a scholarship fund for filmmakers from underrepresented backgrounds.

Howard King, an entertainment attorney and partner at King,

Holmes, Paterno & Soriano LLP, said enforcing an inclusion rider through charitable donations seems like a legally wise move, as it sets up a remedy for noncompliance that wouldn't likely interfere with production.

But he noted that the Screen Actors Guild and the Directors Guild of America already require employers to "make good faith efforts" to promote underrepresented groups in media.

If inclusion riders are to be effective, he said, they'd need to be stringent. But stringent requirements would likely further provoke a reverse discrimination claim, which King said already seems like an inevitability.

"As a litigator, I would look forward to representing the white man who doesn't get a job based on these provisions," King said. "I'm all for more hiring of underrepresented classes of people, but I don't think contracts can socially engineer that result."

Eskenazi said that while "everybody expects there could be some legal challenges down the line," she thinks inclusion riders could be just the shot in the arm Hollywood needs to take diversity seriously.

"If you motivate people with a financial penalty, you'd be surprised how much more quickly things can progress," Eskenazi said.

Kotagal wrote in an email Tuesday that it was encouraging to see inclusion riders gaining so much traction.

"Broadening its reach will be instrumental to creating opportunity in Hollywood for groups that have long been underrepresented," Kotagal said. "Like any contractual language, the rider is not one-size-fits-all so it's important to work with well-informed counsel who can tailor it to a specific scenario."