An ACC Docket Interview with Weir Diffrent LLP CEO Adina Smith

Law Department Management

CHEAT SHEET

- ***Dare to be Diffrent.*** This fictionalized interview presents Weir Diffrent LLP, an idealized law firm that upends traditional orthodoxy.
- ***A ripple effect.*** Weir Diffrent takes aim at the billable hour by use of value billing practices such as flat fees, performance bonuses, and contingent fees.
- ***Estimated profit.*** Weir Diffrent sets a threshold of US$1 million per year of work per client to ensure lasting and fruitful institutional relationships.
- ***In the eyes of the world.*** The fictional law firm presented here seeks to inspire by introducing radically different value-based billing principles.

Note to readers: What follows is, so far, a work of fiction, the idea that the legal industry can be different — radically different — than it is today. But not that radically different from many service organizations that exist to help customers solve problems and move ahead in their businesses. We invite you to “listen in” on the future, and decide whether this fictionalized firm is the kind of law firm that you would want to hire for your organization.

Washington, DC

January 3, 2018

ACC: In what can only be described as a remarkable feat of engineering, the law firm of Weir Diffrent — in the space of a few short years — has redefined what it means to be an elite provider of legal services. With me today is Adina Smith, now in her third year as chief executive officer of Weir Diffrent.

Adina, let’s begin with Weir’s mission statement — why did Weir decide to focus exclusively on “client value” as the core of its mission to be the “value-driven provider of legal solutions”?

Adina: Intense competition forces you to focus on what really matters to your customers — in this case, our clients. When I was interviewing with Weir in 2015 to become their CEO, I heard a lot about the law firm’s core values of collegiality and sharing of work and clients, as well as the firm’s dedication to winning cases. Certainly those core values have served the firm and its clients well, and as you will see, continue to be core to Weir’s mission today. But clients wanted both more, and less, from their law firms — more value delivered to them, and less cost inside the law firm. So we set about to study everything we did from the perspective of “How does this add value to our clients?” If it didn’t, we eliminated it. The next step, and in many ways the harder one, was to identify those things we were not doing, but needed to do to add value. For that, we had a series of conversations with our clients, and those companies that we wanted to have as clients, which we dubbed our “listening tour.”

We then thought we knew what needed to be done to engineer the value-driven law firm.

ACC: Can you talk a bit about how you decided to define “value”? It seems to me that, like beauty, value is in the eye of the beholder.

Adina: Actually, you are mostly right with that analogy. In talking with clients about what they defined as "valuable" to them, we got a pretty broad list of items in response. But once we studied the list, we were able to distill it to a handful of pretty universal principles that also had the advantage of being relatively easy to translate to our lawyers. We called these the "Weir Diffrent Difference Makers" and they are the basic fundamentals of our law firm (see sidebar).

There is more, of course, but these definitions of value were embedded in virtually everything we heard during our listening tour.

ACC: Against this backdrop of what it means to be value-driven, can you give me some examples of things you eliminated, and things you added as a result of the client conversations?

Adina: Sure. I suspect we will discuss many of these in more detail, so let me just hit a few highlights. We decided that it was best to engineer first on a blank slate, and then adapt the conclusions to the realities that we faced. On the cost side, we looked at the main drivers — real estate, and professional costs. We had done a lot already to manage staff and departmental (HR, Marketing, IT) costs, so that we were at least comparable with our peer firms in terms of head count per lawyer, and cost per FTE.

The low-hanging fruit was on the real estate side. We concluded pretty quickly we had far more, and more costly, real estate than would be optimal once we streamlined the delivery of legal services and solutions. We pared down our center city offices, subletting space as we went, or turning back space at the end of leases. We also decided to take modest space in less expensive suburban campuses, as well as openly embracing telework. Through these efforts, we drastically cut down both our rented square feet per attorney, and our average cost per square foot. We also were able to make our attorneys more productive, by cutting down, or eliminating altogether, extensive commute times that are so common in the cities in which we are located. We then redesigned how we use the real estate we did retain, so that we could more efficiently do the client's work by housing project-based teams in hubs that allow all the people related to a specific project to work collaboratively in the same space, which is also where all of the case information resided as well. In essence, we applied the concept of "Kaizen" to how we set up our own "factory floor," so our workflow now moves seamlessly from initial creation to final execution.

We then tackled the other principal cost item — professional salaries and overheads. Our actions here reflect both sides of our value engineering, as we eliminated certain actions and added others. We significantly pared back our on-campus recruiting efforts, because these represented an enormous investment of attorney time, significant expenditures of firm dollars, and all to bring people on-board that clients expressly stated they would not immediately pay for. It didn't take a large retrospective for us to conclude that there was little correlation between law school academic performance and real world value creation for clients. So we mostly scrapped the traditional approach to talent recruitment, and took a page from many of our client tech companies on how to identify high potential individuals. We now use a battery of psychological interview questions and role play that highlight candidates with strong attributes for teamwork, problem solving, and trustworthiness. Our early returns are that we are much better able to consistently identify people who are likely to succeed in a value-engineered law firm.

Next, we spent considerable time and resources building a program to train incoming lawyers to be "Weir Diffrent lawyers." This meant training them to be able to perform their craft at the highest level through clinical-style programs using actual cases, transactions, and regulatory and counseling problems, and only bringing them on to active files once we were satisfied that core competencies had been successfully learned. During the training period, we paid our lawyers at 60 percent of their market rate, but allowed each lawyer to progress at his or her own pace through the program. The only requirement was that everyone had to complete the program successfully within six months; if they didn't, we concluded that the individual would not be likely to succeed and we terminated his or her employment. Upon completion of the program, all lawyers received a fixed bonus of two months of their compensation; we felt this provided a proper balance between incentives to absorb the program fully, and at the same time complete the clinical courses in a timely way. Clients recognized our investment in our clinical programs as providing value to them, and we expressly earmark 0.25 percent on all fee bills as going directly to fund our Weir Diffrent Training Center. The WDTC also covers the business of law — everything from lean Sigma to legal project management. Every one of our lawyers understands the concept of time-and-motion studies, of cycle times, and of the need to be efficient. We teach our lawyers not only what things cost today, but how to drive those costs down sustainably over time.

Finally, we have pretty dramatically pared our partnership-track associate and counsel ranks, and added career staff attorneys at several levels. We found that there was a tremendous amount of high quality talent that wanted to work on flexible arrangements, and that would help us to reduce — in many cases substantially — our costs per hour to produce legal work. For the law firm itself to be sustainable, we need a critical mass of partner track talent moving through the ranks, and ultimately becoming the owners and leaders of the law firm. But we concluded we could pretty significantly move the cost needle without impairing the law firm's future, and our value-driven commitment made doing so a business imperative. An expected, but important, fringe benefit is that our professional employee turnover rate is the lowest in the industry, substantially reducing our costs to acquire and retain talent — simply put, we can afford to hire fewer people than we used to because we more often get the right skillset, and we retain more people now than we could before. This continuity produces higher returns on our investment in recruiting and training talent, and in developing our understanding of the client's business.

Our next focus was on how to utilize technology more effectively. Technology has long been viewed as a "necessary evil" in the old law firm model — something that takes today's money to make tomorrow's tasks less remunerative by allowing them to be done in less time, or with less people, or with less expensive people. Predictive coding is a good example of what law firms long feared — machines that can conduct massive document reviews not only at far less expense than law firms, but with better outcomes, and less variability in outcomes as well. Law firms built around the traditional pyramid, hourly rate model, resisted these sorts of innovations mostly out of a strong sense of short-term self-preservation. But we realized that such short-term thinking would quickly lead to medium term demise. So we decided to truly embrace technology and utilize it every way we could to better understand our own business, our client's businesses, and to more efficiently work with our clients. Once we did this, some of the low hanging fruit included:

1. Real time client interactive dashboards and virtual meeting places. This drove a lot of efficiencies both within our teams, and between our teams and the client's teams.
2. Knowledge management and up-to-date forms. Technology offered the opportunity to eliminate most of the old style "learning by doing" that we all grew up with. The practice of law for a long time sensibly was like an apprenticeship, but maintaining much of that construct proved to be unsustainable in the modern world. Clients were way ahead of us on the use of templates, checklists, and forms, and we knew that we needed not only to catch up, but to really lead the way here. So, again, we earmarked a modest percentage of every fee bill as explicitly supporting the Weir KM database, providing the client assurance that we were maximizing the value of everything we had done up to that point, and able to offer that value

to the client. Whether it was pulling together the initial draft of a Stock Purchase Agreement or a patent license agreement, or civil complaint. or motion to dismiss, the client had our assurance that we not only had all of the client's required best practices incorporated into the document, but also upgrades from our work for other clients, as well as our own research (for example, successful Twombly motions in cases we were not handling). A somewhat unexpected, but important, benefit of this change was to reduce our malpractice insurance costs, as the carrier came to understand the risk management benefits of this high-level approach to standardizing what we did.

3. Comprehensive data on what things cost. When I started, the e-billing companies were already slicing and dicing millions of time records to show clients what specific tasks and cases cost across different law firms. We knew we needed to have a better knowledge of our own costs to build smart, cost-based pricing models, and also to provide benchmarks against which we could measure efficiency gains in being able to drive down the costs of specific tasks year over year.

Weir Diffrent difference makers

1. Help the client understand the legal/regulatory rules of the road, so that the client can manage the company's risk in a cost-effective manner.
2. Work with the client to understand how the company does business, and advise the client on how it can achieve its business goals while better mitigating risks. Work with the client to audit risks, and provide contextual training to its employees.
3. Where the rules of the road are unclear or unfavorable, help the client clarify or change them in ways that are consistent with the company's values. Relatedly, help the client "see around the corner" to identify risks and threats to, and opportunities for, the client's businesses at the earliest possible time, and collaboratively develop strategies to proactively get ahead of coming developments.
4. Provide a continuous stream of "lessons learned" not only from working together, but from working with other clients as well, so that the client can have the benefits of "best of breed."
5. When the client is defending a dispute, understand the company's goals and constraints, and work to develop the most cost-effective strategy to achieve those goals, consistent with the company's constraints. Budget realistically, and for what is likely to occur, not for worst-case scenarios. Work on fee arrangements that reward everyone for achieving successful outcomes, under budget. If one hour of your time solves the client's problem, the company will pay for value received, not effort expended. But that works on the other end as well — the client will not pay lots of money for lots of effort that doesn't provide value.
6. When the client is the claimant, focus on the reasons for commencing litigation or arbitration, and develop a winning, cost-effective strategy. Expect to be paid for results, but only consistent with how much is at stake. If the potential recovery will cost too much to achieve, tell the client before it starts, not after the client has spent a lot of money.
7. Calibrate to the client's needs, not the law firm's. Commodity work should not be the province of brain surgeons. Let the client decide when "good" is good enough, and when great is required.
8. Understand the company's values, and reflect them in the firm's engagements with the client. These generally include diversity and sustainability, but also values such as privacy and data protection, and promoting and preserving the company's reputation.
9. Value means providing next year's services at less cost than this year's services, all other things equal. To accomplish this on a sustainable basis means becoming more efficient, or finding others to do it at lower costs under your supervision.

ACC: Adina, you are talking about basically starting over, and completely changing how lawyers are recruited, trained, promoted, and how well they work together, and with clients. How in the world did you accomplish this level of change in such a short time?

Adina: Change management is really hard. And I will be the first to say (or maybe my partners will be first to say) that it wasn't without its missteps and false starts. And while it would be great to be able to tell you that everyone at Weir Diffrent understood what needed to be done, and in a spirit of partnership and teamwork, everyone immediately began to row together toward our newly defined goals, it wasn't anywhere near that easy. We did start from some very basic points of agreement — everyone at the firm wanted the firm to be successful, and sustainably so. The challenge was to get agreement on what "success" meant — to many, it meant "winning cases", whether as litigators, or before regulators. So the first challenge was to get consensus that winning cases, but blowing budgets, did not meet the definition of success. Likewise, winning cases, but having an unhappy client who would not bring more work to the firm, or refer others to us, was neither successful nor sustaining. All in all, those conversations went reasonably well. Some defined success as "making the most money," or at least more than we had been making. But that aligned with our new focus, so that, too, went reasonably well.

The much harder part was then designing a compensation system that, in fact, rewarded the behavior we said we needed for sustainable success — lawyering commensurate with the client's needs, by the right people, with both improving outcomes and ever-increasing efficiency of workflow. In short, we needed to redefine "productive" lawyers not as lawyers who logged lots of billable hours, but lawyers who solved more problems and got more work done inside a given amount of hours — lawyers who understood the value of shorter cycle times, who made effective use of knowledge management, and developed processes that eliminated the amount of "rework" (which clients rightly pointed out didn't add value). Basically, we wanted to reward our people for turning out defect-free solutions in as efficient a manner as possible, using all the tools and technology we could cost-effectively bring to bear.

Weir had already started using profitability data in partner compensation when I came on board. To align compensation with client values, however, required more. We experimented with a few different metrics, but in the end settled on a short list:

1. **Client satisfaction:** This metric turned out to measure a lot of the right behavior all at once. Our after action review with clients covered the outcome of the engagement, the quality of the budget, the management of the case (performance to budget), the level of overall responsiveness, and the quality of communications and transparency. It also measured other, important behaviors, such as our level of achievement of the client's other goals (diversity, sustainability, privacy), and whether we had staffed the matter with the right people for the right job. As a direct output of our listening tour, we built the questionnaire we now send to every client electronically, so that results can be tabulated electronically as well. This has the added benefit of allowing us to observe comments over time, and to spot potential problems before they lead to real unhappiness. We have made this as painless for the clients as we can, but have also stressed how important their role is in helping us to stay focused on delivering what they value. When the clients see how important a few thoughtful minutes of their time can be, they readily respond. We pride ourselves on a 100 percent response rate to our client satisfaction surveys.

2. **Profitability:** Every project requires some quantity of the firm's resources to complete, and we hold our partners accountable for their use of those resources. If someone uses US$200,000 of resources to generate US$200,000 of revenues, he is not making a profit for the firm. So sharpening the focus on profitability of matters reinforces the client values of "right person for the job" and "efficient delivery of legal solutions."
3. **New relationships:** To be sustainable in a world where clients define value in part as reducing legal spend year over year, we need to add new clients every year. But like our existing client relationships, these new relationships need to be profitable. We therefore added to our compensation decisions bonus points for bringing on board new, profitable relationships.
4. **Brand enhancement:** Enhancing the Weir Diffrent brand reduces our costs of client acquisition and retention and, as I noted earlier, our costs of talent acquisition and retention. We therefore also value in our system those partners (and others) who enhance the firm's brand as reflected in lawyer and law firm rankings, in winning matters that provide positive press for the firm, and in recruiting new lawyers who add luster to our brand. We also reward those who continue to be industry thought leaders and innovators, as they add to our brand and differentiate Weir Diffrent from other law firms in critical ways.
5. **Talent development:** We also thought it important to explicitly value those partners who develop our talent through designing training curricula, teaching our clinical courses, and mentoring and sponsoring our more junior talent. We decided to also include here incentives for effective succession planning and execution, to encourage our more senior lawyers to build client teams with clear levels of responsibility. This is critical to multi-generational, institutional relationships.

ACC: You have hinted in a couple of responses that the firm places a real premium on efficiency, because clients do as well. How has this affected the manner in which the firm prices its services?

Adina: As you know, none of what we have done works well in a billable hour model. We now do 90 percent or more of our work on some combination of flat fees (with and without success kickers), performance bonuses, and contingent fees. In some cases, particularly as we are initially scoping matters, an hourly rate model can make sense, but even there we would prefer to do a flat fee for a specific scope of work or period of time.

I would say, however, that our pricing approach is only one piece of the puzzle. Flat fees provide clients predictability of spend, but not much else. The value add comes from overlaying the flat fee approach with serious analytics on what things should cost to get the job done, and crisp project plans that show the client exactly what we will, and won't, be doing for our flat fee, along with staffing plans that show who will be doing the work. All of our cost-driven efficiencies then allow us to complete the work in less time and with fewer resources, so that we can price very competitively against other law firms, and still make the kind of margin we want to make to stay at the very top of the industry.

ACC: You have talked on several occasions about the change in Weir's client roster the past couple of years. Why did you think it was necessary or desirable to pare the roster?

Adina: Our cost analysis revealed that we were spending 80 percent of our departmental costs — Conflicts, Marketing, Billing, Accounting — on hundreds of clients that provided, at best, 20 percent of our total revenues. A big reason for this was the way in which we historically compensated partners, providing higher compensation to partners that had a demonstrable "book" of business. Even after we moved the compensation focus from top line revenue to bottom line profitability, there was still a perception among partners that what mattered was building what looked like a “personal” book of business. We decided that was an inefficient model. If we were going to take the time to invest in knowing our clients’ businesses, and really understand them at a level that would enable us to add value as the clients defined that term, we knew we needed not fewer clients, but clients that provided us with a minimum base of business to support our investment. We set a somewhat arbitrary threshold of US$1 million as the entry point — to be a Weir client, the company had to be spending, or anticipate spending in the near term, at least US$1 million a year with us. That, of course, set off a huge controversy within the firm, as many of our partners felt that their opportunity to be “business generators” had just been crushed, along with, they thought, their potential for large paychecks. This is where our listening tour and other ground work proved invaluable. We were, very deliberately, setting out to create larger, more institutional, relationships. To do that, we needed a culture in which individual partners would be considered highly successful if they contributed to both landing and building out those larger relationships. If you go back to our compensation criteria I talked about earlier, you will notice that the client satisfaction piece is first on the list — that is no accident. By having extensive, high quality data on client satisfaction, and by consistently utilizing such data in compensation decisions, in just a short time we were able to persuade the partnership that the new model works, and works exceedingly well. In our system now, there is not a single partner who can speak of a client as “my client” in any meaningful sense of the word, and that tone of conversation has simply disappeared from the law firm’s lexicon. We do, of course, have relationship partners where clients identified that as important to them for efficient communications and accountability in the relationship. But those relationship partners are compensated along with their client teams based on how well the client thinks they are doing, and how profitably they manage the relationship.

We are currently examining a possible compensation model that allocates to each client team an expected profit pool for the coming year, based on the client’s anticipated spend for that year. Team members would then have a collective incentive to drive that profit up over the target amount, so that they could have bonus dollars to share among the team; we are thinking that 80 percent of the profit above target would be kept within the team, and 20 percent be made available for broader firm distribution. We are still thinking this one through to see if there are any unintended consequences.

ACC: With all the changes that you have accomplished in the past three years is it even possible to offer a prediction of what is to come in the next three?

Adina: Judging from the legal industry press, Weir can expect that a number of firms will emulate what we have done, and our current comparative advantage will shrink unless we continue to push relentlessly on exceeding client expectations. We are using our KM and our WDTC to enhance the personal side of the client experience, much like the very best service organizations do today. If, in three years’ time, clients universally say that their engagements with Weir Diffrent are even better than today, and are the most satisfying, and consistent from among all their law firms, I think we will have done well.

Why Chief Legal Officer Jerry Garcia moved his company’s business to Weir Diffrent

Generally speaking, when working with outside counsel I am interested in value in legal services, which I define as: (1) efficiency in services (through management of all expenses incurred to solve the problem), (2) predictability of spend, and (3) quality results. The value-focused approach of Weir Diffrent feels more like a true partner to me as an in-house counsel — a partner that shares the same objectives and challenges, and more importantly, has taken action to align its interests with mine.

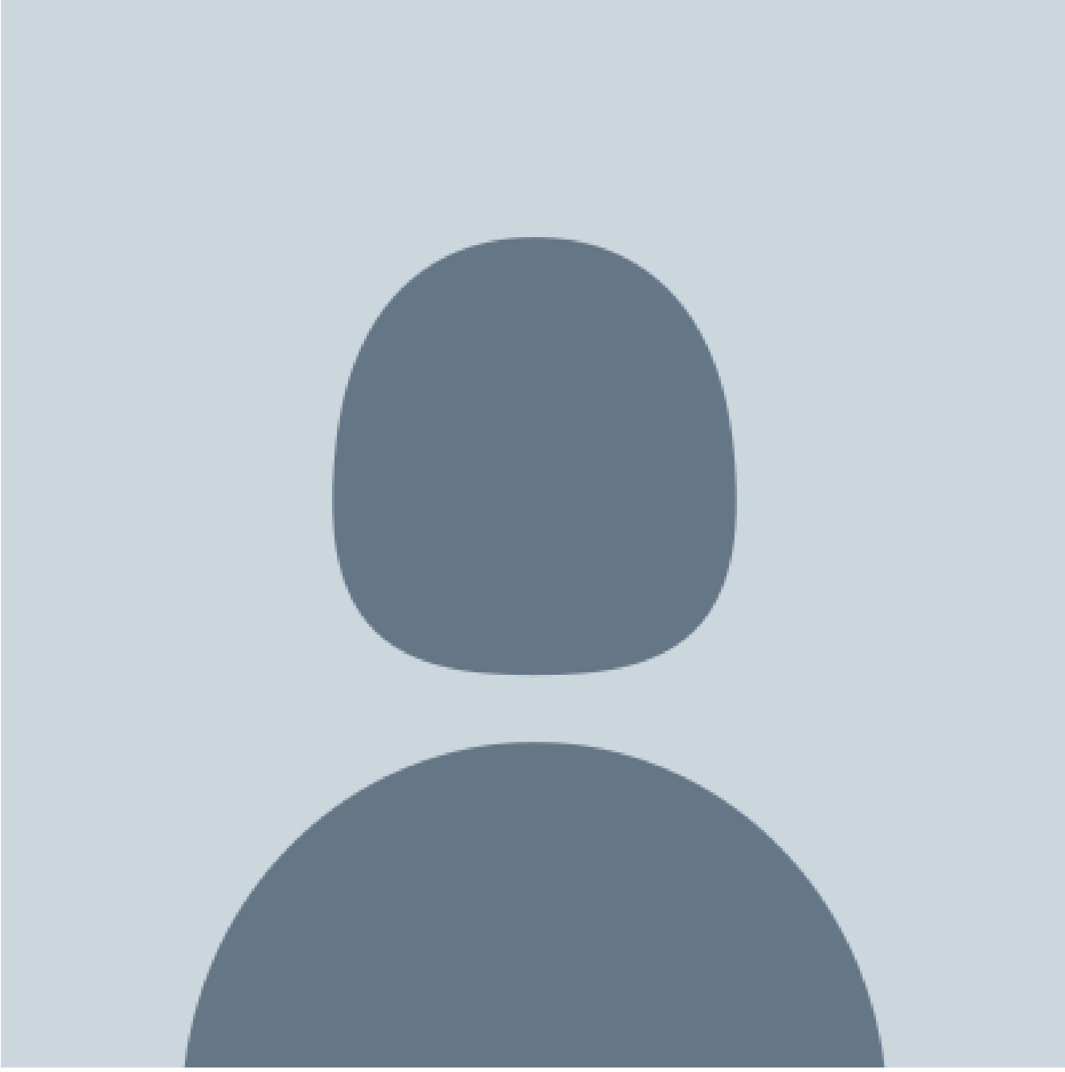
The hourly model rewards hours worked, not value. In my view, this is the core problem. Weir Diffrent took on thorny issues like compensation, which must be addressed in order to change behavior and address this issue.

Restructuring compensation is the critical element that will help firms more effectively deliver value to corporate clients, but more will need to be done to improve results. Weir Diffrent's management invested prudently in technology and reporting to improve insights into the production and workflow of the firm. It has been said that "what can be measured can be managed." Attorneys, both in-house and outside counsel, should carefully consider the lessons in this statement. Metrics are the language of business, and outside counsel's ability to communicate with clients in terms they understand, demonstrate their value to the legal department and the business, and to collaborate effectively with in-house counsel will be improved by studying this page from Weir Diffrent's playbook.

As a general counsel, I care about how effective my law firms are in managing expenses because I want my firms to be there for me over the long term. In-house attorneys spend considerable time selecting firms, going through convergence, negotiating value-based billing arrangements, and investing in training law firm lawyers on the company's businesses. To realize an appropriate return on those investments, I need my law firms to have sustainable pricing and workflow management strategies, and be committed to continuously improving on the value delivered to my company.

Weir Diffrent's approach to expense management improved the likelihood for profitable engagements and allowed them to invest in the future talent of the firm, both of which are important to law firm sustainability. One of the greatest opportunities for sustainable improvement in expense management and better outcomes is knowledge management. Firms have a wealth of knowledge and expertise that is only fractionally used, and in many situations deliverables are recreated from scratch. The potential exists to tap into that knowledge so that every attorney working on a particular client matter has the benefit of the firms' experience with not only that specific client, but to also learn from similar issues with all other clients. The quality and effectiveness of law firm services would be improved if every matter concluded by capturing the knowledge of lessons learned through an after action review, and disseminating that knowledge to all staff in the normal course of business (as opposed to something that must be searched, assuming it could be located) through technology.

Russ Dempsey

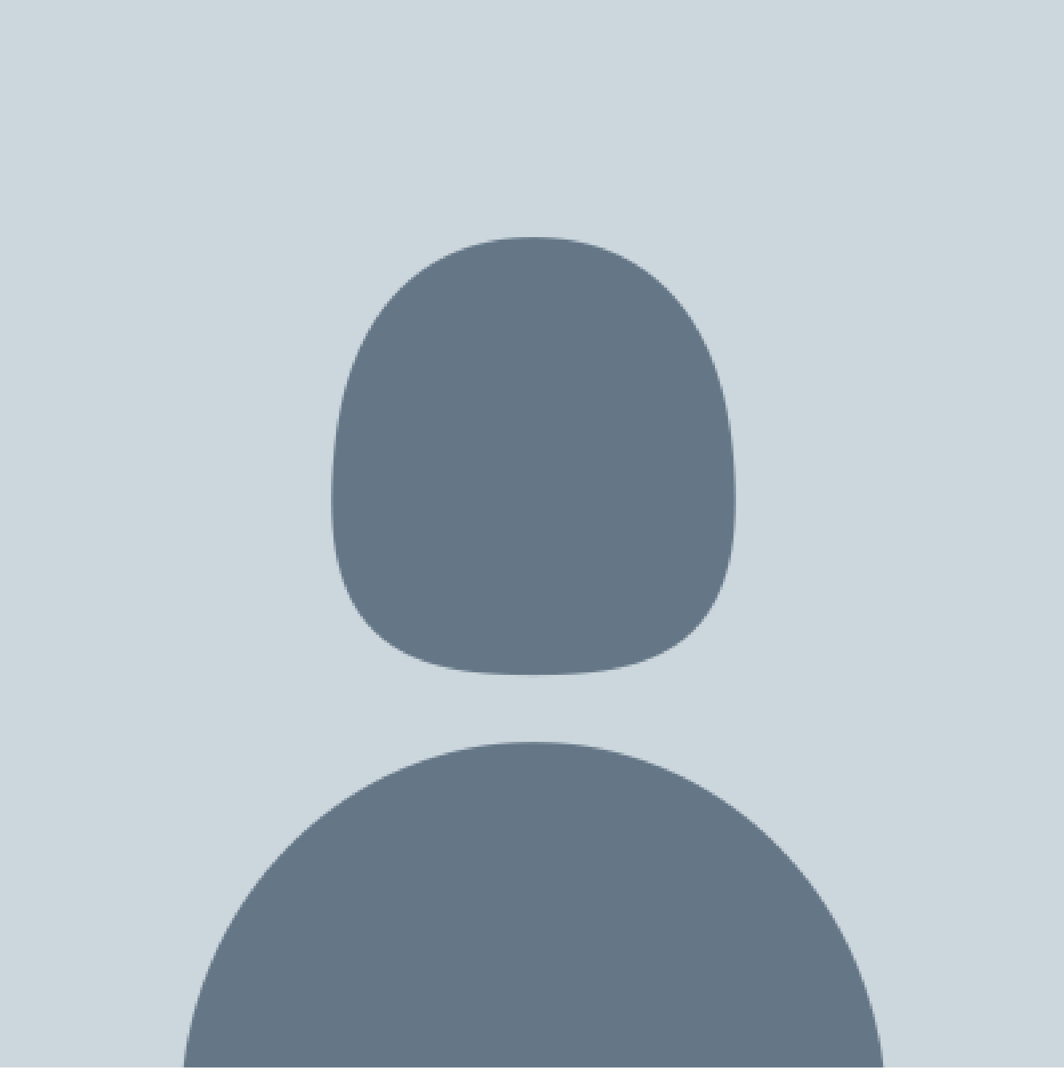


Chief Legal Officer

United Retirement

He is a past Value Champion, serves on the Value Challenge Steering Committee, as faculty for the Legal Services Management workshop, and is a member of ACC’s board of directors.

Rob Lipstein



Rob Lipstein has worked closely with ACC since 2010 as a founding faculty member of the ACC Value Challenge Legal Service Management workshops, sharing his law firm leadership experiences on pricing and project management. After 37 years of private practice in Washington, DC, as an antitrust, international trade, and IP lawyer, Lipstein retired at the end of 2015. The views expressed in the article are his own.