Catalyst Consulting Accelerates Privilege Review, Reduces Documents by 79%

While our Am Law 100 client was addressing a hostile takeover, the U.S. Department of Justice launched an antitrust investigation. DOJ demanded that the company turn over all non-privileged documents, and do so quickly. With 400,000 documents at issue, counsel needed a way to expedite its review for privileged documents so it could turn over the rest to the DOJ.

Law Firm Needed a Way to Quickly Segregate Privileged Documents

To identify potentially privileged materials among the 400,000 documents, Catalyst’s consultants started by searching for names and key legal terms that would be red flags. Because the company’s general counsel was custodian of many of the documents, search names and terms appeared frequently.

Counsel faced some 250,000 documents meriting further privilege review. That was far too many to review manually within the time allotted. Our challenge was to find an alternative means to more precisely narrow the field.

Catalyst Grouping Approach Identifies the Documents Most Likely to be Privileged

Faced with an urgent need to narrow the field, we worked with counsel to come up with a new approach. We reasoned that most privilege calls turn on sender and recipient. Given this, we used SQL to analyze authors and recipient combinations. Specifically, we sorted documents into five folders based on authors and recipient attributes.

The first folder contained documents to and from the company’s in-house attorneys. The second folder held documents between in-house and outside counsel. Folders three and four held in-house and outside attorney documents copied to non-lawyer employees. The fifth folder held the remainder that were returned as potentially privileged based on search score but were less likely to be privileged.
The outcome of our analysis was dramatic. We reduced the number of documents that were highly likely to be privileged from 250,000 to 51,000. We did so in less than a day. The firm was able to review these documents, determine privilege and meet the DOJ deadline.

Several months later, U.S. Magistrate Judge John M. Facciola and Nixon Peabody partner Jonathan M. Redgrave published a law review article advocating just such an approach to privilege review. In what they called The Facciola-Redgrave Framework, they rejected document-by-document privilege review in favor of the use of categories to focus on the information most likely to be privileged. Through such an approach, they wrote, “the cost of claiming and adjudicating privilege claims can be greatly reduced.” We agree.

**Consultants Are Trained in Law, Experts in Search**

As document collections grow more voluminous and searches more complex, clients and counsel turn to companies that offer both superior technology and the expertise to put it to use. The Catalyst consulting group includes lawyers who are experts in complex searching, including privilege searching, workflow and quality control. They represent just one of the many Catalyst advantages.