

# *Three-phased M&A review: Hart-Scott-Rodino and DOJ second request with rolling production.*

## Summary

Special Counsel seamlessly scaled a fluctuating team of licensed attorney reviewers and PMs to manage our corporate client's dynamic, multi-phased review pursuant to a DOJ Second Request



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## Opportunity

A Fortune 500 health and wellness corporation was involved in acquisition proceedings. The company engaged Special Counsel—their preferred managed solutions provider—to staff and manage a three-phased document review in our network of turnkey review centers. The project phases would include a Hart-Scott-Rodino review for responsiveness, privilege, issues, and additional tags, followed by a DOJ – Federal Trade Commission Second Request review, and finally privilege log preparation. Special Counsel was given one week to hire the initial team and begin training.

### *Business Challenges*

- Delays in Communication: Because our client's outside counsel associates were working long hours to address several aspects of the case outside of the scope of
- Protocol Switching: There were discrepancies between the protocols for custodian documents and the third-party production documents. Since the custodian documents had been given a higher priority, the team had to switch between protocols as new collections of custodian documents were added. This process slowed down the team's productivity for a short amount of time with every switch, as it required some mental adjustment each time to adjust to the different review protocol.
- Review Tool Quirks: Persistent highlighting in the review tool was only guaranteed to show up in HTML views, while documents were easier for reviewers to read in other viewer formats.

the review, they were delayed in responding to questions and giving feedback to the review manager throughout the project.

## Engagement / Our Solution

Special Counsel quickly assembled a team of six licensed attorney reviewers and one attorney project manager to complete the Hart-Scott-Rodino phase over one weekend in our Washington, D.C. review center. A few months after successfully completing the first phase, Special Counsel was engaged to ramp up a team for the Second Request review. We hired an initial team of 25 reviewers with one PM and scaled up to 100 reviewers with three PMs within a few weeks of the review onset. Outside counsel established an issue coding option for documents that contained responsive material but were outside of the responsive date range, keeping in mind the possibility that these documents would be requested at a later date. Since the protocol didn't allow our team to designate when these documents contained privileged information, our PM suggested a workflow to create sub-tags for privilege under the responsiveness tag. This allowed the client to easily search for these documents in the event they later needed to be produced. Our lead PM worked with the eDiscovery vendor to address missing tags due to over-reliance on persistent highlighting. Together, the PM and eDiscovery vendor resolved the issue by creating searches using specific terms for levels of confidentiality and for privilege. After completing the Second Request review, which included over 30,000 redactions for sensitive information, a subset of the review team stayed on to complete the privilege log.

### Key Metrics / Fast Facts

- Review Team Size: Started with one PM and six reviewers; over the course of the three-phase project, the team scaled up to 100 reviewers with three PMs during the Second Request, and down to 19 reviewers with one PM for privilege log creation
- Location: Washington, D.C., Baltimore, and Chicago Turnkey Legal Centers
- Duration of Project: Four months, with a break between the first-phase Hart-Scott-Rodino review and the Second Request review/privilege log creation
- Total Docs Reviewed: Over 382,000

## Highlights / Outcomes

This was a dynamic review with an exceptionally tight QC protocol, dynamic coding protocols, big shifts in team size and volume, and rolling productions. Special Counsel's project manager was a true partner and liaison between the over-worked outside counsel associates and the review team. Our client and outside counsel appreciated Special Counsel's nightly reporting and frequent communication throughout the review. The project was completed on time and on budget. Special Counsel continues to be the corporate client's preferred managed review provider.

