



## Check Please: Challenging a PDF Form of Production

*Rahman v. Smith & Wollensky Rest. Group, Inc.*, is an employment discrimination case where the Defendants produced guest checks from a database in PDF format on CD-ROM, in three-year batches, with a unique index number identifying each check. *Rahman v. Smith & Wollensky Rest. Group, Inc.*, 2009 U.S. Dist. LEXIS 30275, 10 (S.D.N.Y. Mar. 18, 2009).

The Plaintiffs claimed the production was done in an "unsequential, jumbled up manner." *Rahman*, 10 (S.D.N.Y. Mar. 18, 2009). Additionally, the Plaintiffs' expert claimed the PDF format would make the analysis of the data "extraordinarily time consuming and expensive." *Rahman* 11.

The Court did not see a "jumbled" production or anything wrong with producing in PDF format.

Plaintiffs' arguments failed for several reasons. First, the Court did not find the production to be an unorganized "document dump." Secondly, there was no evidence the Plaintiffs specified the form of production in their discovery request. The Court stated, "Without specific instructions otherwise, pdf format -- a familiar format for electronic files that is easily accessible on most computers -- is presumptively a 'reasonably usable form.'" *Rahman*, 13.

The Court quickly torpedoed the expert's claimed production inefficiencies. The Defendant had produced "over one hundred thousand checks that showed a waiter's name, table assignment, and tips." *Rahman*, 14. This information, coupled with the other document produced, should have enabled the economic expert to perform any required analysis for the Plaintiff's claims. *Id.*

PDF productions are perfectly acceptable if a requesting party does not specify the form of production. *Rahman*, 13, citing, *Autotech Technologies Ltd. v. Automationdirect.com, Inc.*, 248 F.R.D. 556, 559-60 (N.D. Ill. 2008) (Documents produced in pdf and tiff format complied with Federal Rule of Civil Procedure 34 where the requesting party failed to specify the form of production ).

The Plaintiff might have had a better argument if the checks were searchable ESI that had been converted to non-searchable PDFs. Case law and the Federal Rules of Civil Procedure Advisory notes prohibit converting ESI that is in searchable form into a non-searchable form. *In re Payment Card Interchange Fee, Slip Copy*, 1007 WL 121426 (E.D.N.Y.), 4, citing Fed.R.Civ.P. 34(b), 2006 Amendment, Advisory Committee's Note. However, the opinion makes no mention of extracted text or whether the PDFs were searchable.



