4. An opinion from the U.S. District Court for the Southern District of New York refusing to compel the Plaintiffs to reproduce electronic medical records in a native format, where the records had already been produced in a PDF format that was "reasonably usable."

In *Babakhanov v. Ahuja*, No. 23-cv-2785 (LJL), 2023 WL 6977394 (S.D.N.Y. Oct. 23, 2023), U.S. District Judge Lewis J. Liman addressed whether a party could be ordered to reproduce ESI in native format after it was produced in a PDF format.

Plaintiffs brought this action for breach of contract and fraudulent inducement against two doctors who sold Plaintiffs a medical practice, claiming that Defendants had engaged "in systemic waste, fraud and abuse" prior to the sale. *Id.* at *1. During discovery, Plaintiffs produced, in PDF form, patient files from the electronic medical records of the medical practice, but Defendants moved to compel inspection of the electronic medical records in their native form.

Defendants argued that they required access to the electronic medical records in native form to (1) see the templates, functions, dropdowns, and buttons available when completing a chart; (2) identify who prepared, reviewed, viewed, or documented entries in a particular chart; (3) confirm that there are no other records or documents stored on the electronic medical record system that relate to the claims at issue; (4) examine "the full medication records and history maintained by the practice for the entire universe of patients at issue"; and (5) obtain access to all medical records for that universe of patients. *Id.* at *2. Plaintiffs responded that Defendants had not requested that the ESI be produced in native format and that they produced the ESI in a reasonably usable form, the same form in which such information is produced in the ordinary course of business to insurance carriers.

Judge Liman explained that Federal Rule of Civil Procedure 34(b)(2)(E) sets forth the procedures applicable to the production of ESI and provides in pertinent part that "unless otherwise stipulated or ordered by the court … (i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request; (ii) If a request does not specify a form for producing [ESI], a party must produce it in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and (iii) A party need not produce the same [ESI] in more than one form."

Judge Liman quoted from the Advisory Committee Notes to the 2006 Amendment to Rule 34, which provided that "the option to produce [ESI] in a reasonably usable form does not mean that a responding party is free to convert [ESI] from the form in which it is ordinarily maintained to a different form that makes it more difficult or burdensome for the requesting party to use the information efficiently in the litigation."

Judge Liman further explained that “if ESI is kept in an electronically-searchable form, it should not be produced in a form that removes or significantly degrades this feature.” However, he noted that “courts in the Second Circuit have denied requests for metadata, even where the metadata itself might have some probative value, where that potential value is outweighed by the cost and burden of production.”

Judge Liman found that Plaintiffs demonstrated that the requested information was produced in an ordinary form as such information is kept in business and in a reasonably usable form and that the documents in PDF form contained all of the information relevant to the litigation. He further concluded that Defendants did not articulate any nonspeculative reason to believe that the failure to produce the electronic medical records in native format would make it any more difficult or burdensome for Defendants to defend against Plaintiffs’ claims efficiently. Judge Liman noted that the only information Defendants identified that was not in the PDF documents was the identity of the person who input the information into the electronic medical records, although the PDF documents indicated who signed an electronic health record.

Judge Liman explained that a party need not produce the same ESI in more than one form, and here the documents had already been produced in PDF form. He noted that Defendants knew the form in which the records were kept, and if they had wanted the records in native format, “they should have asked for such records up front.” Accordingly, he found that requiring Plaintiffs to reproduce the electronic medical records in native format “would impose an undue burden on Plaintiffs far exceeding any value or potential relevance records in that format would have for this litigation.”